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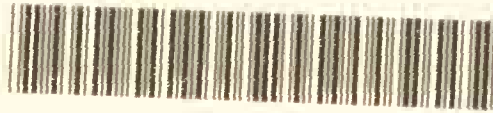
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REPORT OF
COMMISSIONER FOR
REVISION AND REFORM
OF THE LAW

STATE OF CALIFORNIA
1909

REPORT

OF

Commissioner for Revision and Reform of the Law

GENERAL LAWS CODIFIED, GENERAL LAWS REPEALED,
CODE SECTIONS AMENDED AND NEW
SECTIONS ADDED

J. W. WILEY, Commissioner

1909



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1909.

REPORT

Commissioner for Revision and Reform of the Law

OFFICE OF THE COMMISSIONER
FOR REVISION AND REFORM
OF THE LAW
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December, 5, 1908.

The following acts of the legislature, commonly called "General Laws," have been recommended for repeal or codification as stated in the notes thereto.

In codifying the general laws, it has not been the purpose of the Commissioner to make any substantial changes therein, except where necessary to harmonize with other portions of the law, or to render the same more efficient, but to bring them under the proper headings in the respective codes.

GENERAL LAWS CODIFIED AND NEW SECTIONS ADDED.

The act of March 31, 1891 (Statutes 1891, page 237), authorizing the controller and treasurer to transfer to the general fund all moneys to the state drainage construction fund, is codified as section 691 of the Political Code.

The new section reads as follows:

Sec. 691. The controller is hereby authorized to transfer to the general fund all moneys standing to the credit of the state drainage construction fund, and also, from time to time, to transfer to the general fund all moneys that may hereafter be paid into the state drainage construction fund. The controller immediately after making such transfers shall notify the treasurer of the same, and the treasurer shall thereupon make corresponding transfers upon the books of his office.

The act of March 2, 1899 (Statutes 1899, page 46), relating to the desecration of the American flag, is codified as section 648b (new) of the Penal Code.

The new section reads as follows:

Sec. 648b. Any person who shall desecrate the flag of the United States, by printing thereon or attaching thereto any advertisement of any nature whatsoever, shall be deemed guilty of a misdemeanor.

The act of February 20, 1872 (Statutes 1872, page 121), relating to military academies, is codified as sections 2047 and 2048 of the Political Code.

The new sections read as follows:

Sec. 2047. When any military academy has been established within the state, having not less than eighty boys, uniformed, drilled, and instructed in strict accordance with the tactics of the regular United States army service, and all its course of education and economy conducted upon strict military principles, the military instructor of such academy, when regularly elected by the board of trustees or other lawful authority of the academy, be commissioned in the national guard of California, with the rank of major.

Sec. 2048. Upon giving bond, with good security, to be approved by a judge of the superior court of the county where the academy is situ-

ated, conditioned for the safe-keeping against fire, loss, and against all damages, in twice the value, that arms and accoutrements, the property of the state, be issued for the use of the military academy, mentioned in section two thousand forty-seven, and the adjutant-general of the state is hereby authorized to issue such arms and accoutrements as may be needed by the said military academies, without a monthly allowance, in the same manner as arms and accoutrements are issued to regular organized companies of the national guard of California, upon requisition made for this purpose, approved by the commander-in-chief.

The act of March 10, 1891 (Statutes 1891, page 47), requiring municipalities to grant annual vacations to members of the police force in the respective municipalities, is codified as section 721 of the Penal Code.

The new section reads as follows:

Sec. 721. In every city or city and county of this state where there is a regularly organized paid police force, the board of supervisors, common council, commissions, or other body having the management and control of the same, and required once in every year to provide for granting each member thereof a leave of absence from active duty for a period of not less than ten nor more than fifteen days. Leaves of absence so granted must be arranged by said board or commission so as not to interfere with the police protection of any such city or city and county, or to impair in any way the efficiency of the department; and leaves of absence granted in case of sickness or in consequence of wounds or injuries received while in the discharge of duty shall not be construed to be or become a part of the leave of absence provided for by this act. No deduction must be made from the pay of any police officer granted a leave of absence under the provisions of this section.

The act of March 23, 1893 (Statutes 1893, page 183), relating to the powers and duties of parole commissioners for the parole of and government of paroled prisoners, is codified as section 1088a (new) of the Political Code.

The new section reads as follows:

Sec. 1088a. The state board of prison directors of this state shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned in any state prison, and who may have served one calendar year of the term for which he was convicted, and who has not previously been convicted of a felony and served a term in a penal institution, may be allowed to go upon parole outside of the buildings and inclosures, but to remain while on parole in the legal custody and under the control of the state board of prison directors, and subject at any time to be taken back within the inclosures of said prison; and full power to make and enforce such rules and

regulations and retake and imprison any convict so upon parole is hereby conferred upon said board of directors, whose written order so certified by the president of said board shall be a sufficient warrant for all officers named therein to authorize such officer to return to actual custody any conditionally released or paroled prisoner, and it is hereby made the duty of all chiefs of police, marshals of cities and villages, and sheriffs of counties, and all police, prison and peace officers and constables to execute any such order in like manner as ordinary criminal process; *provided, however*, that no prisoner imprisoned under a sentence for life shall be paroled until he shall have served at least seven calendar years. The governor of the state shall have like power to cancel and revoke the parole of any prisoner, and his written authority shall likewise be sufficient to authorize any of the officers named therein to retake and return said prisoner to the state prison, and his written order canceling or revoking the parole shall have the same force and effect and be executed in like manner as the order of the state board of prison directors. If any prisoner so paroled shall leave the state without permission from said board he shall be held as an escaped prisoner and arrested as such. (Amendment, Stats. 1901, p. 82.)

The act of March 20, 1905 (see amendments), relating to contagious diseases of animals, was amended March 23, 1907 (Stats. and Amdts. 1907, page 932), by substituting in lieu thereof an entirely different act relating to the different subject-matter.

It is therefore recommended that the substance of the original act of March 20, 1905, be reënacted as sections 374*b*, 374*c*, and 374*d*, of the Penal Code.

The new sections read as follows:

Sec. 374*b*. Any person having the care, custody, or control of any animal that dies from tuberculosis, glanders, farcy, Texas fever, or other infectious disease, who does not immediately upon the death of such animal cremate or bury the carcass of the same, or cause the same to be cremated or buried, shall be deemed guilty of a misdemeanor.

Sec. 374*c*. Any common carrier of persons or freight that shall transport any animal suffering with, or that has died from the diseases, or any of them mentioned in section 374*b* of this code a greater distance than is necessary to transport such animal to the nearest crematory, shall be deemed guilty of a misdemeanor.

Sec. 374*d*. Any person who uses or sells the carcass or any portion thereof, of an animal that has died of any contagious disease as food for human beings or any domestic animal, or fowl, is guilty of a misdemeanor.

The act of April 18, 1880 (Statutes 1880, page 102), relating to the payment of the expenses of posse comitatus by the respective boards of supervisors, is codified as section 151 of the Penal Code.

The new section reads as follows :

Sec. 151. The board of supervisors of any county may allow, in their discretion, such compensation as they may deem just, to defray the necessary expenses that have been incurred by a posse comitatus in criminal cases; *provided*, no claim shall be allowed for expenses which have not been incurred within one year before such allowance.

A new section relating to appeals in divorce proceedings is added to the civil code, to be known as section 149.

The new section reads as follows :

Sec. 149. The right of the superior court to enforce its orders or judgments for the payment of money, or giving security therefor under the provisions of sections 136, 137, 138, 139, and 140, shall not be stayed or suspended by appeal unless an undertaking is given as provided in section 942 of the Code of Civil Procedure.

The various cemetery acts contained in the general laws have been combined with title XIII of the Civil Code relating to cemetery corporations, by amendment, repeal, and new sections added, and all of the general laws relating to the management and conduct of cemetery corporations repealed.

The sections of the Civil Code relating to cemetery corporations would then read as follows :

Sec. 608. Corporations, for the purpose of procuring, holding, and managing lands to be exclusively for a cemetery or place for the burial or cremation of the dead, may be formed by seven or more persons who must execute and file articles of incorporation as provided in chapter I, title I, part IV of this code. Upon receiving from the secretary of state a certificate of the filing with him of a certified copy of its articles of incorporation, such corporation becomes a body corporate, and by its corporate name has succession for the period limited in its articles and power—

First—To sue and be sued in any court.

Second—To make and use a common seal, and alter the same at pleasure.

Third—To purchase, hold, sell, and convey, such real and personal estate as the purposes of the incorporation shall require.

Fourth—To appoint such officers, agents, and servants, as the business of the corporation shall require to define their powers, prescribe their duties, and fix their compensation.

Fifth—To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two thirds of the whole number of trustees, or by a vote of a majority of the trustees, on a written request, signed by one half of the lot owners.

Sixth—To make by-laws, not inconsistent with the laws of this state, for the organization of the company, the management of the property, regulation of its affairs, for holding meetings, and for carrying on all kinds of business within the object and purposes of the corporation. The affairs and property of such associations shall be managed by the trustees, who shall annually appoint, from among their number, a president and vice-president, and shall also appoint a secretary and treasurer, who shall hold their places during the pleasure of the board of trustees, and the trustees may require the treasurer to give security for the faithful performance of the duties of his office.

Seventh—To take and hold any real or personal property bequeathed, granted or given to it in trust, to apply the income thereof under the direction of the trustees of such corporation for the improvement or embellishment of such cemetery or crematory, or for the erection or preservation of any building, fence, or walks, erected or to be erected upon the land of such corporation or upon the lots or plats of any of the members, or for the preservation or removal of any tomb, monument, gravestone, fence, railing, or other structure or improvement, in or around any cemetery lot, plat or grave, or for the planting or cultivating of trees, shrubs, flowers, or plants, in, upon, or around any such lot, plat, or grave, or for improving or embellishing such cemetery, or any of the lots, or plats, in any form or manner, consistent with the design and purpose of the association, according to the terms of such grant, devise or bequest.

Sec. 610. Any association incorporated under this title may take, by purchase or devise, and hold, within the county in which the articles of incorporation are filed, not exceeding three hundred and twenty acres of land, to be held and occupied exclusively for a cemetery for the burial or cremation of the dead. Such land, or such parts thereof as may from time to time be required for that purpose, shall be surveyed and subdivided into lots or plats of such size as the trustees may direct, with such avenues, paths, alleys, and sites for buildings as the trustees deem proper; and a map or maps of such surveys shall be filed in the office of the county recorder of the county in which the land shall be situated; and after filing such map, the trustees may sell and convey the lots or plats designated upon such map, upon such terms as shall be agreed upon, and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the trustees shall prescribe. Any association incorporated under this act may hold personal property

to an amount not exceeding five thousand dollars, besides what may arise from the sale of lots or plats.

Sec. 611. Such corporation may issue their bonds, bearing interest not exceeding twelve per cent per annum, for the purchase of lands for their cemeteries, payable out of the proceeds of the cemetery and not otherwise; sixty per cent of the proceeds of sale of lots, plats, and graves must be applied at least every three months to the payment of the bonds and interest. Such corporations may also agree with the person or persons from whom cemetery land shall be purchased, to pay for such lands, as the purchase price thereof, any specified share or portion, not exceeding sixty per cent of the proceeds of all sales made from such lands; such payment to be made at such intervals as may be agreed upon. In all cases where cemetery lands shall be purchased and agreed to be paid for in the manner last provided, the prices for lots or plats specified in the by-laws, rules, or regulations first adopted by such association, or prescribed in the agreement between the cemetery and the person or persons from whom the cemetery lands were purchased, shall not be changed without the written consent of a majority in interest of the persons from whom such lands were purchased, their heirs, representatives, or assigns.

Sec. 612. The annual election of trustees to supply the place of those whose term of office expires shall be holden on the day fixed in the by-laws, and at such hour and place as the trustees shall direct; at which election shall be chosen such member of trustees as will supply the places of those whose term expires. The trustees chosen at any election subsequent to the first, shall hold their places for three years, and until others shall be chosen to succeed them. But in all elections after the first, the trustees shall be chosen from among the proprietors of lots, or plats, and the trustees shall have power to fill any vacancy in their number occurring during the period for which they hold their office. Public notice of the annual elections shall be given in such manner as the by-laws of the corporation shall prescribe.

Sec. 617. Corporations incorporated under this title shall, have authority to purchase, lease, or erect buildings and appliances to be used exclusively for the purpose of cremating human bodies, and they may purchase, or lease, and hold land necessary for cremation purposes, or for the erection of columbariums for the entombing of the ashes of the cremated, when inclosed in metal or stone or cement vessels, and not otherwise; but no uncremated body shall be interred or placed for any time whatever inside of the walls, or in the walls of a place where the ashes of the cremated are deposited. Such associations shall invest their funds and use the proceeds thereof, after current expenses are paid, for the perpetual care of grounds, lots, buildings,

and niches, according to contracts made and to be made with patrons, and in conducting its business such association shall have the same powers granted by law to corporations in general; *provided*, they shall have no authority to contract any pecuniary obligation whatever, nor shall they have power to levy or collect assessments. In case of epidemics or the prevalence of contagious diseases, or otherwise, the proper authorities of any county, city and county, city, or town, may order the unclaimed or unknown dead, and the dead who die in public institutions under the control of any county, city and county, city, or town, and the dead commonly buried at public expense, cremated, and their ashes immured or otherwise preserved in receptacles in columbariums, or interred in burial places; and human bodies, and parts of bodies, used in medical or other schools (except specimens to be preserved) shall not be cast into the waters of the state, nor on the ground, nor in the receptacles for refuse matter, nor in vaults, nor in sewers, but shall either be buried as deep in the ground as is by law required for dead bodies, or cremated, as in this act provided. But the remains of a person shall not be cremated by compulsion, under the provisions of this section, if he or his family, or any member thereof, or his church or spiritual adviser objects.

The act of March 23, 1893 (Statutes 1893, page 203), relating to the appointment of guardians of children, has been codified by the amendment of section 246 of the Civil Code.

The amended section reads as follows:

Sec. 246. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor and business then to the father;

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

- (1) To a parent;
- (2) To one who was indicated by the wishes of a deceased parent;
- (3) To one who already stands in the position of a trustee of a fund to be applied to the child's support;
- (4) To a relative.

4. Any person who knowingly or willfully abandons, or having the ability so to do, fails to maintain his minor child under the age of fourteen years, forfeits the guardianship of such child; and any parent or guardian who knowingly permits his child or ward to remain for the space of one year in any orphan asylum of this state, wherein such child is supported by charity, and who, during such period, fails to give notice in writing to the managers or officers of such asylum that he is such parent or guardian, abandons and forever forfeits all right to the guardianship, care, custody, and control of such child. The officers and managers of any orphan asylum having any such abandoned child in its care have thereafter the preferred right to the guardianship of such child; *provided, however*, that such managers shall not be appointed guardian of a minor child over fourteen years of age without its consent, nor shall anything herein preclude the court of competent jurisdiction from inquiring into the fitness of such managers for the guardianship of such children.

The act of February 25, 1897 (Statutes 1897, page 29), should be amended to take effect January 1, 1909, and codified as section 1207 of the Civil Code.

The amended section reads as follows:

Sec. 1207. Any instrument affecting real property, which was, previous to the first day of January, one thousand nine hundred and nine, copied into the proper book of record, kept in the office of any county recorder, imparts, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality thereof, or the absence of any such certificate; but nothing herein affects the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded; *provided*, when such copying in the proper book of record occurred within fifteen years prior to the trial of the action, it is first shown that the original instrument was genuine.

The act of March 11, 1874 (Statutes 1873-4, page 345), relating to conveyances of real estate and indexing thereof, is codified as follows:

Section 1 of said act is included in section 1096 of the Civil Code, and sections 2 and 3 thereof are included in section 4136 of the Political Code amended.

The amended section reads as follows:

Sec. 4136. The recorder may keep in the same volume any two or more of the indices mentioned in section forty-one hundred and thirty-two; but the several indices must be kept distinct from each other, and the volume distinctly marked on the outside in such a way as to

show all the indices kept therein. The names of the parties in the first column in the several indices must be arranged in alphabetical order, and when a conveyance is executed by any public officer pursuant to any law of this state, the name of the officer and the party against whom the process or order was issued must be inserted in the index; and when an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator, or intestate, or party for whom the trust is held, must be inserted in the index; if the title to the real estate is conveyed by or under a different name from that by or under which it was acquired, the county recorder shall alphabetically index in the "index of grantors," both in the name by which the title was acquired, and also in the name by which the same was conveyed.

The act of March 23, 1901 (Statutes 1901, page 589), relating to the powers of supervisors, is codified as an amendment to section 4041 of the Political Code.

The amended section reads as follows:

Sec. 4041. The boards of supervisors, in their respective counties, shall have jurisdiction and power, under such limitations and restrictions as are prescribed by law;

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with the assessing, collecting, safe-keeping, management, or disbursement of the public revenues; to see that they faithfully perform their duties, direct prosecution for delinquencies, and, when necessary, require them to renew their official bonds, make reports and present their books and accounts for inspection.

2. To divide the counties into townships, election, school, road, supervisor, sanitary, and other districts required by law, change the same, and create others, as convenience requires.

3. To establish, abolish, and change election precincts and to appoint inspectors, clerks and judges of election, canvass all election returns, declare the result, and order the county clerk to issue certificates thereof; but no election precinct shall be established or abolished, or the boundaries of any precinct changed, within ninety days prior to any election.

4. To lay out, maintain, control, construct, repair, and manage public roads, turnpikes, ferries, wharves, chutes, and other shipping facilities and bridges within the county, unless otherwise provided by law, and to grant franchises and licenses to collect tolls thereon; *provided*, where the cost of the construction of any bridge, wharf, chute, or other shipping facilities that may be built under the provisions of this subdivision exceeds the sum of five hundred dollars, they must cause to be prepared

and must adopt plans and specifications, strain sheets, and working details, and must advertise for bids for the construction of such bridge, wharves, chutes, or other shipping facilities, unless otherwise provided by law, in accordance with the plans and specifications so adopted. All bidders shall be afforded opportunity to examine such plans and specifications, and said board shall award the contract to the lowest responsible bidder, and the plans and specifications so adopted shall be attached to and become a part of the contract; and the person or corporation to whom the contract is awarded shall be required to execute a bond, to be approved by said board, for the faithful performance of such contract; *provided*, that after the submission of the bids as herein provided, the board of supervisors being advised by the county surveyor that the work can be done for a sum less than the lowest responsible bid, it shall then be their privilege to reject all bids and to order the work done or structure built by day's work, under the supervision and control of the said surveyor; *provided further*, that the surveyor in such cases shall be held personally responsible, under his official bond, to construct said bridge or structure, according to his plans and specifications, at a cost not to exceed the amount of the lowest responsible bid received; *provided*, that the road commissioners or road overseers in their respective districts shall employ all labor required and direct the conduct of work of any kind upon any and all public roads; *provided further*, that in cases of great emergency, by the unanimous consent of the whole board, they may proceed at once to replace or repair any and all bridges and structures without notice.

5. To construct or lease, officer and maintain hospitals and almshouses, or otherwise, in their discretion; provide for the care and maintenance of the indigent sick or dependent poor of the county; and for such purposes to levy the necessary property or poll taxes, or both. The board of supervisors shall appoint some suitable person to take care of and maintain such hospitals and almshouses, and shall also appoint some suitable graduate or graduates in medicine to attend to such indigent sick or dependent poor, and to the patients in such hospitals and almshouses. The board shall not let the care, maintenance, or attendance of such indigent sick or dependent poor by contract to the lowest bidder.

6. To provide a farm, in connection with the county hospital, or almshouse, and make regulations for working the same.

7. To purchase, receive by donation, or lease any real or personal property or water rights necessary for use of the county, and to purchase or otherwise acquire necessary real estate upon which to sink wells to obtain water for sprinkling roads, and other county purposes, and to erect thereon tanks and reservoirs for the storage of water for such purposes, and to erect pumping apparatus for obtaining the same,

to preserve, take care of, and manage and control the same; but no purchase of real property shall be made unless a notice of the intention of the board to make such purchase, describing the property to be purchased, the price to be paid therefor, from whom it is proposed to be purchased, and fixing the time when the board will meet to consummate such purchase, has been published for at least three weeks in some newspaper of general circulation, published in the county; or if none be published in the county, has been posted at least three weeks prior to the time when the board meets to consummate such purchase, in at least three public places in each supervisor district.

8. To cause to be erected, or rebuilt, or furnished, a courthouse, jail, hospital, and such other public buildings, as may be necessary, or to provide suitable buildings for such purposes. None of the aforesaid buildings shall be erected or constructed until the plans and specifications have been made therefore and adopted by the board. All such buildings must be erected by contract, let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation published in such county for at least thirty days. In case there is no newspaper published in such county, then such notice shall be given by posting in three public places.

9. To sell at public auction, at the courthouse door, or at such other place within the county as the board may, by a four-fifths vote, order, after thirty days' notice, given either by publication in a newspaper published in the county, or by posting in five public places in the county, and convey to the highest bidder for cash, any property belonging to the county not required for public use, paying the proceeds into the county treasury for the use of the county; *provided*, if in the unanimous judgment of the board, the property does not exceed in value the sum of seventy-five dollars, or if it be the product of the county farm, the same may be sold at private sale, without advertising, by any member of the board empowered for that purpose by a majority of the board.

10. To examine and audit, at least every twelve months, the accounts of all officers having the care, management, collection, or disbursement of moneys belonging to the county, or moneys received or disbursed by them under authority of law.

11. To examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and such demands as are authorized by law to be allowed by some other person or tribunal, and order warrants to be drawn on the county treasurer therefor.

12. To levy taxes upon the taxable property of their respective counties for all county purposes, and also upon the taxable property of any district, for the construction and repair of roads and highways and other district purposes; *provided*, that no tax shall be levied upon any dis-

strict until the proposition to levy the same has been submitted to the qualified electors of such district, and received a majority of all the legal votes cast upon such proposition.

13. To acquire and take by purchase, condemnation, or otherwise, land for the uses and purposes of public boulevards; to lay out, establish and improve public boulevards and to incur a bonded indebtedness for any of such purposes; *provided*, that no such indebtedness shall be incurred for any such purposes until after the question of the issue of bonds therefor shall have been submitted to the qualified electors of the county, at a special election called for that purpose and two thirds of the electors of the county voting at such election shall have voted in favor of issuing such bonds; said election to be called and held, and said bonds, if authorized, to be issued, sold and made payable in the manner and form prescribed by section four thousand and eighty-eight. Said boards shall also have power to maintain public boulevards, established and laid out under the provisions of this title, and to make and enforce rules and regulations for the protection, management, control and use of such boulevards.

14. To maintain, regulate, and govern public pounds, fix the limits within which animals shall not run at large, and appoint poundkeepers, who shall be paid out of the fines imposed and collected from the owners of impounded animals, and from no other source.

15. To equalize assessments.

16. To direct and control the prosecution and defense of all suits to which the county is a party, and by a two-thirds vote of all the members may employ counsel to assist the district attorney in conducting the same.

17. To insure the county buildings and other property in the name of and for the benefit of the county.

18. To establish a salary fund, and such other county funds as they may deem necessary for the proper transaction of the business of the county, and to transfer moneys from one fund to another, as the public interest may require.

19. To fill, by appointment, all vacancies that may occur in any office filled by the appointment of the board of supervisors and elective county or township officers, except in those of judge of the superior court and supervisor, the appointee to hold office for the unexpired term or until the next general election.

19a. To employ the copyists necessary to reproduce any of the county records that may be in danger of destruction by age, obliteration, or constant use in any of the county offices.

20. To make and enforce such rules and regulations for the government of their body, the preservation of order, and the transaction of business, as may be necessary.

21. To adopt a seal for the board, a description and impression of which must be filed in the office of the county clerk and of the secretary of state.

22. To license, in the exercise of their police powers, and for the purpose of regulation, as herein provided, and not otherwise, all and every kind of business not prohibited by law, and transacted and carried on within the limits of their respective jurisdictions, and all shows, exhibitions, and lawful games carried on therein, to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise; *provided, however*, no license can be collected, or any penalty for the nonpayment thereof enforced against any commercial traveler whose business is limited to the goods, wares, merchandise sold or dealt in in this state at wholesale.

23. To provide for the destruction of gophers, squirrels, other wild animals, noxious weeds, and insects injurious to fruit or fruit trees, or vines, or vegetable or plant life.

24. To provide for the prevention of injuries to sheep by dogs, and to tax dogs and direct the application of the tax.

25. To provide, by ordinances not in conflict with the general laws of the state, for the protection of fish and game, and may shorten the season for the taking or killing of fish and game, within the dates fixed by the general state laws, but shall not lengthen the same.

26. To provide for the working of prisoners confined in the county jail, under judgment of conviction of misdemeanor, under the direction of some responsible person, to be appointed by the sheriff, whose compensation shall not exceed one hundred dollars per month, upon the public grounds, roads, streets, alleys, highways, or public buildings, or in such other places as may be deemed advisable, for the benefit of the county.

27. To provide for the burying of the indigent dead.

28. To make and enforce, within the limits of their county, all such local police, sanitary, and other regulations as are not in conflict with general laws.

29. To adopt such rules and regulations, within their respective counties, with regard to keeping and storing of every description of gunpowder, Hercules powder, giant powder, or other explosive or combustible material, as the safety and protection of the lives and property of individuals may require.

30. To appropriate from the general fund of the county, unless otherwise in this title provided, not to exceed, in counties of the first and second class, the sum of three thousand dollars, and in all other counties the sum of two thousand dollars in any one year, to aid in or carry on the work of inducing immigration thereto, or for the purpose of exhib-

iting or advertising the agricultural, mineral, manufacturing, or other resources of the county.

31. To enforce, by ordinance, within the limits of their counties, all such regulations concerning the size of wagons and vehicles of all kinds to be used on the roads or highways, and the width of tires on the same, as are not in conflict with general laws.

32. To grant licenses and franchises for constructing, keeping, and taking tolls on roads, bridges, ferries, wharves, chutes, booms, and piers, and to grant franchises along and over the public roads and highways for all lawful purposes, upon such terms and conditions and restrictions as in their judgment may be necessary and proper, and in such manner as to present the least possible obstruction and inconvenience to the traveling public.

33. To grant, on such terms, conditions, and restrictions as in their judgment may be necessary and proper, licenses and franchises for taking tolls on public roads or highways, whenever in their judgment the expense necessary to operate or maintain such public roads or highways as free public highways is too great to justify the county in so operating or maintaining them. It shall always be a condition attached to the granting of such licenses and franchises, that such roads or highways shall be kept in reasonable repair by the person or persons to whom such licenses or franchises may be granted.

34. To enact ordinances and regulations for the construction, alteration, repair, and control of all public roads and highways in the county, unless otherwise provided by law.

35. To levy a special road fund tax, not to exceed two (2) mills on the one dollar of assessed valuation, on all the property in such counties, outside of any incorporated city or town. Such tax shall be in addition to all taxes otherwise provided for, and the fund so created shall be expended for the construction and maintenance of the main public roads or county highways in the several road districts, in proportion to the amount collected from such districts.

36. To encourage, under such regulations as they may adopt, the planting and preservation of shade and ornamental trees on the public roads and highways, and on and about the public grounds and buildings of the county, and pay to persons planting and cultivating the same, for every living tree thus planted, at the age of four years, a sum not exceeding one dollar.

37. To provide by ordinance for the organization and government of districts, to protect and preserve the banks of rivers and streams and lands lying contiguous thereto from injury by overflow or the washing thereof, and to provide for the improvements of said rivers and streams, and prevent the obstruction thereof, and to provide for the assessment, levy, and collections within such districts of a tax therefor.

38. To appropriate a sum not exceeding two cents per one hundred dollars of the assessed valuation of their county in any one year, in addition to any sum which may be chargeable to the county for the repayment of money expended by the state for protection against fire in such county, for the purpose of protecting forest, brush and grass lands therein, against fire or other injury, and of aiding the state and federal authorities in forestry work.

39. To do and perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the legislative authority of the county government.

40. The boards of supervisors of the several counties within the State of California, or any of them, are hereby authorized and empowered to levy a special tax on the taxable property within their respective counties, for the purpose of creating a fund not exceeding ten thousand dollars in any one year in any one county, to be used for collecting, preparing, and maintaining an exhibition of the products and industries of the county of any domestic or foreign exposition, for the purpose of encouraging immigration and increasing trade in the products of the State of California; *provided*, the total tax levies for such purposes in any one year shall not exceed two cents on each one hundred dollars of taxable property in the county, according to the assessment roll.

The act of March 23, 1901 (Statutes 1901), relating to the exclusion of aliens from employment by the state, county, city and county of this state, is codified as sections 3251, 3253, and 3254 of the Political Code.

The new sections read as follows:

Sec. 3251. No person, except a native-born or naturalized citizen of the United States, shall be employed in any department of the state, county, city and county or incorporated city or town government in this state.

Sec. 3253. It shall be unlawful for any person, whether elected, appointed, or commissioned to fill any office in either the state, county, city and county, or incorporated city or town government of this state, or in any department thereof, to appoint or employ any person to perform any duties whatsoever, except such person be a native-born or naturalized citizen of the United States.

Sec. 3254. No money shall be paid out of the state treasury, or out of the treasury of any county, or city and county, or incorporated city or town, to any person employed in any of the offices mentioned in section 3253 of this code, except such person shall be a native-born or naturalized citizen of the United States.

Sec. 1. An act entitled "An act to secure to native-born and naturalized citizens of the United States, the exclusive right to be employed

in any department of the state, county, city and county, or incorporated city or town government in this state," approved March 23, 1901, is hereby repealed.

The act of March 25, 1889 (Statutes 1889, page 451), providing for improvements in the capitol building should be codified as an amendment to section 412 of the Political Code.

The amended section reads as follows:

Sec. 412. The secretary of state is the superintendent of the state capitol and keeper of the public archives, and shall have charge of the state capitol, and he must keep the same, together with all property therein, in good order and repair.

The act of April 1, 1872 (Statutes 1872, page 951), to protect the wages, salaries, and fees of subordinate officers, is codified as section 74a (new) of the Penal Code.

The new section reads as follows:

74a. Every officer of this state, or of any county, city and county, city, or township therein, who accepts, keeps, retains, or diverts, for his own use or the use of any other person any part of the salary or fees allowed by law to his deputy, clerk, or other subordinate officer, and every person who employs laborers upon the public works, and who takes, keeps, or receives, any part or portion of the wages due to such laborers from the state, county, or municipal corporation for which such work is done, is guilty of a felony.

The act of March 21, 1905 (Statutes 1905, page 673), relating to the sale of intoxicating liquors to minors, is codified as an amendment to section 397b of the Penal Code.

The amended section reads as follows:

Sec. 397b. Every person who sells, gives, or delivers to any minor child, male or female, under the age of eighteen years, any intoxicating drink in any quantity whatsoever, or who, as proprietor, manager, or barkeeper of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years, to visit said saloon or public house where intoxicated liquors are sold, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for a period not exceeding one hundred and fifty days, or by both such fine and imprisonment; *provided*, that this section shall not apply to the parents of such children, or to guardians of their wards.

The act of March 29, 1877-8 (Statutes 1878, page 695), to protect stockholders and persons dealing with corporations, is codified as section 564 of the Penal Code, amended.

The new section reads as follows:

564. Any superintendent, director, manager, officer or agent of any corporation or joint-stock association formed, or existing, under the laws of this state, or any foreign corporation transacting business in this state, or any person representing himself as such superintendent, etc., who knowingly makes, publishes, or posts, or concurs in making, publishing, or posting, either generally or privately, to any of the stockholders or other persons, any written report, exhibit, or statement of its affairs, or pecuniary condition, or book or notice, containing any statement which is false, or any untrue or false, fraudulent, or exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a different actual or market value than they really possess, or refuses to make any book or post any notice required by law, in the manner required by law, is guilty of a felony.

**THE FOLLOWING AMENDMENTS TO THE POLITICAL CODE
ARE RECOMMENDED FOR THE REASONS STATED IN
THE ACCOMPANYING NOTES.**

Section 3608 of the Political Code is amended to eliminate the argumentative parts at the beginning thereof, and made to read as follows:

Sec. 3608. All property belonging to corporations, save and except the property of national banking associations not assessable by federal statute, shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute.

Sections 3446 and 3492 of the Political Code, relate to the same subject-matter, and in most respects, are identical. It is therefore suggested that section 3446 be amended to include the provisions of section 3492 by inserting the first clause thereof, and repealing section 3492. Section 3446 as amended reads as follows:

Sec. 3446. Whenever the holders of title or evidence of title representing one half or more of any body of swamp and overflowed, salt marsh or tide lands, or other lands subject to flood or overflow, susceptible of one mode of reclamation, desire to reclaim the same, or, whenever the holders of title or evidences of title representing one half or more of any body of swamp and overflowed, salt, marsh, or tide lands, susceptible of one mode of reclamation, and already reclaimed, or in progress of reclamation, and not included in any existing reclamation district, who may desire to form a reclamation district for the maintenance, protection, and repair of the reclamation works, in, upon, or appertaining to such body of lands, or for the completion of the reclamation thereof, they may present to the board of supervisors of the county in which the lands, or the greater part thereof, are situated, at a regular meeting of the board, a petition, setting forth that they propose to form a district for the reclamation of the same, a description of the lands by legal subdivisions or other boundaries, the county in which they are situated, the number of acres in the proposed district, and in each tract, with the names (if known) of the owners thereof, and designating as unsold any lands not reduced to private ownership.

Section 4300a of the Political Code requires the claimant to pay fifteen cents upon filing claim against the estate of a deceased person. The proposed amendment omits this item.

The amended section reads as follows:

Sec. 4300a. On the commencement of any action or proceeding in the superior court, except probate proceedings or on an appeal thereto, to be paid by the party commencing such action or proceeding, or taking such appeal, five dollars.

On the filing of a petition for letters of administration, testamentary, or guardianship, five dollars, to be paid by the petitioner.

On filing the petition to contest any will or codicil, three dollars.

On the appearance of any defendant, or any number of defendants answer jointly, to be paid upon filing the first paper in the action by him or them, two dollars.

On placing any action, excepting a probate proceeding, or default case, on the calendar for trial or hearing, to be paid by the party at whose request such action or proceeding is so placed, two dollars.

For every additional defendant appearing separately, one dollar.

The foregoing fees shall be in full for all services rendered by such clerk in the cause, to and including the making up of the judgment roll.

On the filing of any notice of motion to move for a new trial of any civil action or proceeding, the party filing same shall pay to the clerk, in full for all services to be rendered in connection with said motion, except as hereinafter in this section provided, two dollars.

For issuing an execution or order of sale in any action, one dollar.

In all proceedings or acts performed prior to this section becoming a law, such fees and charges as were provided by law at the time such proceedings were begun or acts performed.

The clerk shall also charge and collect the following fees and compensation not above provided for:

For any copy of any record, proceeding, or paper on file in the office of the clerk relating to any civil action pending in said court, when such copy is made by him, per folio, ten cents.

For each certificate of the clerk, under the seal of the court, twenty-five cents.

No fees shall be allowed or charged by the clerk for services rendered in any criminal case.

For services rendered by the clerk, not in connection with civil actions or proceedings in court, he shall charge and collect, for the benefit of the county, the following fees:

For issuing marriage license, one half to be paid to the county recorder, two dollars.

For filing and indexing articles of incorporation, one dollar.

For filing and indexing certificates of copartnership, one dollar.

For filing and indexing all papers to be kept by him, other than papers filed in actions or proceedings in court, and official bonds and certificates of appointment, each, twenty-five cents.

For issuing any license required by law, other than marriage licenses, one dollar.

For examining and certifying to a copy of any paper, record or proceedings prepared by another, and presented for his certificate, fifty cents, and one cent per folio for comparing the said copy with the original.

For making satisfaction of or credit on judgment, twenty-five cents.

For receiving and filing remittitur from supreme court, fifty cents.

For administering each oath, without certificate, except in a pending action or proceeding, ten cents.

For taking any affidavit, except in criminal cases, twenty-five cents.

For taking and approving each undertaking, and the justification thereof, except in criminal cases, fifty cents.

For searching records on files, for each year, fifty cents.

For taking acknowledgment of any deed or other instrument, including the certificate, fifty cents.

For filing notices of appeal and appeal bonds, each twenty-five cents.

Section eighteen hundred and seventy-five of the Political Code is in violation of section 4, article IX of the constitution, and should be repealed.

See *McCord vs. Slavin*, 143 Cal. 325.

Sections 1868, 1869, and 1870 of the Political Code are penal statutes entirely, and their codification is suggested, as follows:

Section 1868 as section 422 of the Penal Code; section 1869 as section 78 of the Penal Code, and section 1870 as section 79 of the Penal Code, and thereupon all of said sections, that is to say, 1867 to 1870 inclusive should be repealed.

The new sections read as follows:

Section 1867 of the Political Code is entirely covered by the provisions of 653b of the Penal Code, and should be repealed.

422. Any person who shall willfully disturb any public school, or any public school meeting, shall be guilty of a misdemeanor and be liable to a fine of not less than ten, nor more than one hundred dollars.

Sec. 78. Any state, county, or city and county superintendent, or any state, county, or city and county board of education, who shall issue a certificate or diploma, except as provided by law, shall be guilty of a misdemeanor.

Sec. 79. Any school officer or member of any board of education or any teacher in any public school who shall act as agent for any author, publisher, bookseller, or other person to introduce any book, apparatus, furniture, or any other article whatever, into the common schools or high schools of this state, or any one or more of them, or directly or indirectly

contracts for, or receives any gift or reward for so introducing or recommending the same, is guilty of a misdemeanor, and shall be removed from office, and the certificate of such teacher be revoked.

Section 1. Section eighteen hundred and seventy-five of the Political Code is hereby repealed.

**THE FOLLOWING AMENDMENTS TO THE CIVIL CODE ARE
RECOMMENDED FOR THE REASONS STATED IN THE
ACCOMPANYING NOTES.**

Section 1193 of the Civil Code, relating to certificates of acknowledgment by officers, is amended to require such certificates to state when the term of office, or commission, expires.

The amended section reads as follows :

Sec. 1193. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; there must also be written or printed on some part of the certificate a statement of the date on which the term of office, or commission, of the officer expires. Also, their seals of office, if by the laws of the state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

Section 599 of the Civil Code is amended to permit corporations other than for profit to mortgage and sell their real estate without an order of court.

The amended section reads as follows :

Sec. 599. Corporations now organized or that may hereafter be organized for purposes other than profit, may, either in their by-laws, ordinances, constitutions, or articles of incorporation, provide for :

1. The qualification of members, mode of election or appointment, and terms of admission to membership ;

2. The fees of admission and dues to be paid to their treasury by members ;

3. The number of persons that shall constitute a quorum at any meeting of the corporation, and that an election of officers of the corporation by a meeting so constituted, or the appointment or selection of such officers, or any of them, in any manner required by the rules, regulations, or discipline of any specified religious denomination, society, or church, shall be as valid as if made at an election at which a majority of the members of the corporation were present and voted ;

4. The expulsion and suspension of members for misconduct or non-payment of dues, also for restoration to membership ;

5. A special method of organizing the board of directors, and a special method of increasing or diminishing the number of directors within the limits as to number prescribed by section five hundred and ninety-three of this code ;

6. Contracting, securing, paying, and limiting, the amount of their indebtedness;

7. That the rules, regulations, or discipline, for the time being, of any specified religious denomination, society, or church, shall always be a part of their by-laws, ordinances, constitutions, or articles of incorporation;

8. For the purchase and sale of real estate which they may be authorized by law to hold, and to mortgage and hypothecate the same to secure fulfillment of its obligations;

9. Other regulations not repugnant to the constitution or laws of the state and consonant with the objects of the corporation.

Sections 1390 and 1393 of the Civil Code are combined as section 1390, and section 1391 and 1392 are combined as section 1391.

The amended sections read as follows:

Sec. 1390. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins-german in the fourth, and so on.

Sec. 1391. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends. In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to father and grandfather toward the sons and grandsons.

Section 1265 of the Civil Code is amended to harmonize with section 1474 of the Code of Civil Procedure, relating to the same subject-matter.

The amended section reads as follows:

Sec. 1265. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, or from the separate property of the spouse making the selection or joining therein, the land so selected on the death of either spouse, vests

in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this title.

Section 3005 of the Civil Code is amended to give pledgee right to sell pledged property without foreclosure proceedings.

The amended section reads as follows:

Sec. 3005. The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice sale of personal property under execution.

As section 300a of the Civil Code now reads, no provision is made for showing change of name of record in any county where copies of the original article or copies thereof are filed.

The proposed amendment includes such provision, and reads as follows:

Sec. 300a. Every corporation which has changed its name under the provisions of sections one thousand two hundred and seventy-five, one thousand two hundred and seventy-six, one thousand two hundred and seventy-seven, one thousand two hundred and seventy-eight, and one thousand two hundred and seventy-nine of the Code of Civil Procedure, must file in the office of secretary of state and in the office of the county clerk of each county in which the original articles or certified copies thereof are required by law to be filed, a certified copy of the decree of the court changing such name.

Section 1386 of the Civil Code, relating to successions of property of deceased persons, is amended by striking out the word "issue" in the first sentence of subdivision eight and substituting the word "heirs," in lieu thereof.

Sec. 1386. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing thereof by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased chil-

dren, one third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right of representation; but if there is no child of decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally; otherwise, they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living and the issue of the deceased child or children by right of representation.

2. If the decedent leaves no issue, the estate goes one half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either is dead the whole of said half goes to the other. If there is no father or mother, then one half goes in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead then to the other.

3. If there is neither issue, husband, wife, father, nor mother then in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister, by right of representation.

4. If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, sister, nor the children or grandchildren of a deceased brother or sister, the whole estate goes to the surviving husband or wife.

5. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote.

6. If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any such other children who are dead, by right of representation.

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them has left issue, the estate that came to such child by

inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

8. If the deceased is a widow, or widower, and leaves no heir, and the estate, or any portion thereof, was common property of such decedent and his or her deceased spouse, while such spouse was living, such property goes in equal shares to the children of such deceased spouse and to the descendants of such children by right of representation, and if none, then one half of such common property goes to the father and mother of such decedent in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such decedent and to the descendants of any deceased brother or sister by right of representation, and the other half goes to the father and mother of such deceased spouse in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such deceased spouse and to the descendants of any deceased brother or sister by right of representation.

If the estate, or any portion thereof, was separate property of such deceased spouse, while living, and came to such decedent from such spouse by descent, devise, or bequest, such property goes in equal shares to the children of such spouse and to the descendants of any deceased child by right of representation, and if none, then to the father and mother of such spouse, in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such spouse and to the descendants of any deceased brother or sister by right of representation.

9. If the decedent leaves no husband, wife, or kindred, and there are no heirs to take his estate or any portion thereof, under subdivision eight of this section, the same escheats to the state for the support of the common schools.

It is recommended that section 598 of the Civil Code, requiring religious societies and benevolent corporations to obtain an order of court to mortgage or sell the real property belonging to them, be repealed, giving such corporations the right to mortgage and convey their real estate the same as other corporations.

THE FOLLOWING AMENDMENTS TO THE CODE OF CIVIL PROCEDURE ARE RECOMMENDED FOR THE REASONS STATED IN THE ACCOMPANYING NOTES.

Section 692 of the Code of Civil Procedure, relating to notice of sale under execution, is amended to read as follows:

Sec. 692. Before the sale of property on execution, notice thereof must be given as follows:

1. In case of perishable property: by posting notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property, and at the same time filing a copy thereof with the clerk of the court from which the execution was issued.

2. In case of other personal property: by posting a similar notice in three public places in the township or city where the sale is to take place, for not less than five nor more than ten days, and at the same time filing a copy thereof with the clerk of the court from which the execution was issued.

3. In case of real property: by posting a similar notice, particularly describing the property, for twenty days, in three public places of the township or city where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week for the same period, in some newspaper published in the county, if there be one, and at the same time filing a copy thereof with the clerk of the court from which the execution was issued.

4. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment, and at the same time filing a copy thereof with the clerk of the court from which the execution was issued.

Section 553 of the Code of Civil Procedure contains a clerical error in referring to section 537, which is corrected by the following amendment.

The amended section reads as follows:

Sec. 553. If the defendant recovers judgment against the plaintiff, and no appeal is perfected and undertaking to continue the attachment in force as provided in section 946 of this code, any undertaking received in the action, all the proceeds of sales and money collected by

the sheriff, and all the property attached remaining in the sheriff's hands, must be delivered to the defendant or his agent, the order of attachment be discharged, and the property released therefrom.

Section 1469 of the Code of Civil Procedure was evidently intended to prevent the family of a deceased person from being left entirely without means of support. As the section now stands, if the estate is valued at more than \$1,500, it is subject to the debts of the deceased, although such debts may equal or exceed the value of the estate. To meet this manifest injustice an amendment is suggested by which the estate will be set over to the surviving widow when the net value of the estate does not exceed the sum of \$1,500.

The section as amended reads as follows:

Sec. 1469. If, upon the return of the inventory of the estate of a deceased person, and after the expiration of the time for filing claims, it shall appear therefrom that the value of the whole estate does not exceed the sum of fifteen hundred dollars net, and, if there be a widow or minor children of the deceased, the court, or a judge thereof, shall, by order, require all persons interested to appear on a day fixed to show cause why the whole of said estate should not be assigned to the widow or minor children of the deceased, as hereinafter provided. Notice thereof shall be given and proceedings had in the same manner as provided in sections one thousand six hundred and thirty-three, one thousand six hundred and thirty-five, and one thousand six hundred and thirty-eight of this code. If, upon the hearing, the court finds that the net value of the estate over and above all claims and incumbrances, does not exceed the sum of fifteen hundred dollars, it shall, by decree for that purpose, assign to the widow of the deceased, if there be a widow, if no widow, then to the minor children of the deceased, if there be minor children, the whole of the estate, subject to whatever mortgages, liens or incumbrances there may be upon said estate at the time of the death of the deceased, after the payment of the expenses of the last illness of the deceased, funeral charges, and expenses of administration, and the title thereof shall vest absolutely in such assignees, and there must be no further proceedings in the administration, unless further estate be discovered.

Section 1991 of the Code of Civil Procedure, is amended to enlarge the powers of the court to punish disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, in giving a deposition before a notary public.

The amended section reads as follows:

Sec. 1991. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when

required, may be punished as a contempt by the court or officer issuing the subpoena or requiring the witness to be sworn; and if the witness be a party, his complaint or answer may be stricken out.

The witness shall not be punished for contempt, except upon order of the court issuing the subpoena to appear at a time and place named in such order, and show cause why he should not be punished for such disobedience.

Section 1194 of the Code of Civil Procedure is amended to conform to the construction given this section by the supreme court in *Miltmor vs. Nofziger Bros. Lumber Co.*, 150 Cal. 790.

The amended section reads as follows:

Sec. 1194. In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien, or class of liens, which shall be in the following order, viz.:

1. Mechanics, material men, artisans, and laborers of every class.
2. Subcontractors.
3. Original contractors.

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and whenever, in the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner with like effect as in actions for the foreclosure of mortgages.

Section 1034 of the Code of Civil Procedure, relating to the taxation of costs in appellate courts, is amended to provide for the service of a bill of costs on appeal, and for the taxation of such costs to meet the difficulties suggested by the supreme court. See *Bell vs. Superior Court*, 150 Cal. 131.

The amended section reads as follows:

Sec. 1034. Whenever costs are awarded to a party by an appellate court, if he claims such costs, he must, within thirty (30) days after the remittitur is filed with the clerk of the trial court, deliver to such clerk and serve upon the adverse party, a memorandum of the items of his costs and necessary disbursements on the appeal, which memorandum must be verified by the oath of the party, or his attorney or agent, or by the clerk of his attorney, stating that to the best of his knowledge and belief the items are correct and that the disbursements have been necessarily incurred on the appeal. A party dissatisfied with the costs claimed, may, within five (5) days after service of the bill of costs upon him, serve upon the party claiming such costs and file with the clerk of the trial court, notice of a motion to have the costs taxed by such court. When the costs shall have been taxed, or, if no notice of a motion to tax is given within said five (5) days, then, after the

expiration of such five (5) days, the party to whom costs have been awarded may have an execution therefor as upon a judgment.

Section 339 of the Code of Civil Procedure is amended by striking from subdivision one thereof the last clause, "In an action founded upon an instrument in writing executed out of the state."

The amended section reads as follows:

Sec. 337. 1. An action upon any contract, obligation, or liability founded upon an instrument in writing; *provided*, that wherever the time within which any such action must be so commenced would in any case expire by the terms of this section after the first day of June, one thousand nine hundred and six and before the first day of January, one thousand nine hundred and seven, such action may be commenced at any time before the first day of January, one thousand nine hundred and seven, with the same force and effect as if commenced within four years as in this section provided.

2. An action to recover a balance due upon a mutual open and current account or upon an open book account.

Sec. 339. 1. An action upon a contract, obligation, or liability not founded upon an instrument of writing, other than that mentioned in subdivision two of section three hundred and thirty-seven of this code.

2. An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this subdivision does not apply to an action for an escape.

Section 199 of the Code of Civil Procedure, relating to the competency of jurors, is amended to eliminate a clerical error in subdivision three thereof, which refers to section 203 (there being no such numbered section) instead of section 200.

The amended section reads as follows:

Sec. 199. A person is not competent to act as a juror:

1. Who does not possess the qualifications prescribed by the preceding section;

2. Who has been convicted of malfeasance in office or any felony or other high crime; or,

3. Who has been discharged as a juror by any court of record in this state within a year, as provided in section two hundred of this code, or who has been drawn as a grand juror in any such court and served as such within a year and been discharged.

4. A person who is serving as a grand juror in any court of record in this state is not competent to act as a trial juror in any such court.

And a person who is serving as a trial juror in any court of this state is not competent to act as a grand juror in any such court.

Section 850 of the Code of Civil Procedure makes no provision for serving a notice of trial by mail when the party has not appeared by attorney.

The amended section contains such provision, and reads as follows:

850. *Notice of hearing.* When all the parties served with process shall have appeared, or some of them have appeared, and the remaining defendants have made default, the justice must fix the day for the trial of said cause, whether the issue is one of law or fact, and give notice thereof to the parties to the action who have appeared, but in case any of the parties are represented by an attorney, then to such attorney. Such notice shall be in writing, signed by the justice, and substantially in the following form (filling blanks according to the facts):

In the justice court, township (or city, or city and county), county, or city and county of, State of California,, plaintiff, vs., defendant, To, plaintiff, or, attorney for plaintiff, and to, defendant, or, attorney for defendant.

You and each of you will please take notice that the undersigned justice of the peace before whom the above-entitled cause is pending, has set for hearing the demurrer of, filed in said cause (or has set the said cause for trial, as the case may be), before me at my office in said township (or city, or city and county), at o'clock M., on the day of, 19....

Dated this day of, 19....

(Signed),

Justice of the Peace.

Said notice shall be served by mail or personally. When served by mail the justice of the peace shall deposit copies thereof in a sealed envelope in the post office at least ten days before the trial or hearing addressed to each of the persons on whom it is to be served at their place of residence and the postage prepaid thereon; *provided*, that such notice shall be served by mail only when the person on whom service is to be made, resides out of the county in which said justice's court is situated, or is absent therefrom. When personally served said notice shall be served at least five days before the trial or hearing on the persons on whom it is to be served by any person competent and qualified to serve a summons in a justice's court, and when personally served it shall be served returned and filed in like manner as a summons. The judge shall enter on his docket the date of trial or hearing; and when such notice shall have been served by mail the justice shall enter on his docket the date of

mailing such notice, of trial or hearing and such entry shall be prima facie evidence of the fact of such service. The parties are entitled to one hour in which to appear after the time fixed in said notice, but are not bound to remain longer than that time unless both parties have appeared and the justice being present is engaged in the trial of another cause.

It is recommended that section twenty hundred and twenty of the Code of Civil Procedure, relating to taking testimony of a witness out of the state, be amended to provide for taking depositions in default cases.

The amended section reads as follows :

Sec. 2020. The testimony of a witness out of this state may be taken by deposition in the following cases :

1. In an action, at any time after the service of summons, or the appearance of the defendant.

2. In a special proceeding, any time after a question of fact as arisen therein.

3. Where default has been made by any or all of the defendants.

Section 1327 of the Code of Civil Procedure, relating to the contest of wills or the probate thereof, is amended to permit any person to contest the validity of a will at any time before final distribution. As the section now stands such contest may be commenced at any time within one year after the will is admitted to probate, and in cases of small estates, the estate is distributed before the time has expired for contesting the will.

The section as amended reads as follows :

Sec. 1327. When a will has been admitted to probate, any person interested may, at any time before final distribution, contest the same or the validity of the will. For that purpose he must file in the court in which the will was proved, a petition in writing, containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate may be revoked.

Section 2024 of the Code of Civil Procedure, relating to the taking of depositions out of this state, is amended by providing that such depositions may be taken before a notary public.

The amended section reads as follows :

Sec. 2024. The deposition of a witness out of this state may be taken upon a commission issued from the court under the seal of the court, upon an order of the court, or a judge or a justice thereof, on the application of either party, upon five days' previous notice to the other. If the court is a justice's court, the commission must have attached to it a certificate of the clerk of the superior court of the county in which

such justice's court is held, under the seal of such superior court, to the effect that the person issuing the same was an acting justice of the peace at the date of the commission. If issued to any place within the United States, it may be directed to a person agreed upon by the parties, or if they do not agree, to any judge, notary public, or justice of the peace or commissioner selected by the court or judge or justice issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed upon by the parties.

Section 1723 of the Code of Civil Procedure is amended to include "joint tenancy."

The amended section reads as follows:

Sec. 1723. If any person die who, at the time of his death, was the owner of a life estate which terminates by reason of the death of such person; or if such person at the time of his death was one of the spouses owning lands as a homestead, which lands by reason of the death of such person, vested in the surviving spouse; or if such person was a married woman who at the time of her death was the owner of community property which passed upon her death to the surviving husband; or if such person was the owner of property as joint tenant, which upon his death passed to the survivors of such joint tenancy, any person interested in the property, or in the title thereto, in which such estates or interests were held, may file in the superior court of the county in which the property is situated, his verified petition setting forth such facts, and thereupon and after such notice by publication or otherwise, as the court may order, the court shall hear such petition, and the evidence offered in support thereof, and if upon such hearing it shall appear that such life estate of such deceased person absolutely terminated by reason of his death, or such homestead or community property vested in the survivor of such marriage, or if the property held as such joint tenant passed to the survivor, the court shall make a decree to that effect, and thereupon a certified copy of such decree may be recorded in the office of the county recorder, and thereafter shall have the same effect as a final decree of distribution so recorded.

Section 1774a of the Code of Civil Procedure, relating to the settlement of accounts of guardians, is amended to provide for the settlement of accounts of a deceased guardian by his personal representatives.

The section as amended reads as follows:

Sec. 1774a. The guardian must upon the expiration of a year from the time of his appointment and as often thereafter as he may be required, present his account to the court for settlement and allowance;

provided, that no final account of the guardian of any insane person, who is or has been during such guardianship confined in a state hospital in this state, shall be settled or allowed unless notice of the settlement of said account shall have been first given to the secretary of the state commission in lunacy. If any guardian die, his accounts may be presented by his personal representatives to, and settled by, the court, and, upon the petition of the successor of such deceased guardian, the court may compel the personal representatives of such deceased guardian to render an account of the administration of their testator or intestate, and must settle such accounts as in other cases.

It is recommended that section 705, Code of Civil Procedure, be amended by adding after the word "sheriff," the following: "Making the sale or his successor in office."

The amended section reads as follows:

Sec. 705. A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the sheriff making the sale, or his successor in office:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court, or of the county where the judgment is docketed; or, if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder.

2. A copy of any assignment necessary to establish his claim, verified by an affidavit if himself, or of a subscribing witness thereto;

3. An affidavit by himself or his agent, showing the amount then actually due on the lien.

As section 1678 of the Code of Civil Procedure now reads, it makes no provision for distributing personal property to the assignee of the heirs, legatees, or devisees.

The amended section makes such provision, and reads as follows:

Sec. 1678. Partition or distribution of the estate may be made as provided in this chapter, although some of the original heirs, legatees, or devisees may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

Section 422 of the Code of Civil Procedure is amended to provide for issue and service of summons on cross-complaint.

See *Hibernia Savings and Loan Society vs. Clarke*, 110 Cal. 27.

Sec. 422. Whenever the defendant seeks affirmative relief against any party to the action, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property



to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as the original complaint. If any of the parties affected by the cross-complaint have not appeared in the action, a summons upon the cross-complaint must be issued and served upon them the same manner as upon the commencement of an original action.

Sec. 692. Before the sale of property on execution, notice thereof must be given as follows:

1. In case of perishable property: by posting notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property, and at the same time filing a copy thereof with the clerk of the court from which the execution was issued.

2. In case of other personal property: by posting a similar notice in three public places in the township or city where the sale is to take place, for not less than five nor more than ten days, and at the same time filing a copy thereof with the clerk of the court from which the execution was issued.

3. In case of real property: by posting a similar notice, particularly describing the property, for twenty days, in three public places of the township or city where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week for the same period, in some newspaper published in the county, if there be one, and at the same time filing a copy thereof with the clerk of the court from which the execution was issued.

4. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notice required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment, and at the same time filing a copy thereof with the clerk of the court from which the execution was issued.

The act of 1873-4 (Statutes 1873-4, page 132), relating to the collection of money belonging to estates of deceased persons, and on deposit in banks, is codified as section 1454 of the Code of Civil Procedure.

The new section reads as follows:

Sec. 1454. The surviving husband or wife of any deceased person, or if no husband or wife be living, then the next of kin of such decedent, may, without procuring letters of administration, collect from any bank any sum which said deceased may have had on deposit in such bank at

the time of his or her death; *provided*, said deposit shall not exceed the sum of five hundred dollars. Any bank, upon receiving an affidavit stating that said depositor is dead, and that affiant is the surviving husband or wife, as the case may be, or stating that said decedent left no husband or wife, and that affiants are the next of kin of said decedent, and entitled to distribution of his or her estate, and that the estate of said decedent consists wholly of personally property of a value less than fifteen hundred dollars, and stating of what said estate consists, and that the whole amount that decedent left on deposit in any and all banks of deposit in this state does not exceed the sum of five hundred dollars, and give an undertaking to the people of the State of California, that such heirs will restore said moneys to any person lawfully claiming the same, may pay to said affiant any deposit of said decedent, if the same, together with deposits in other banks, does not exceed the sum of five hundred dollars, and the receipt of such affiant shall be a sufficient acquittance therefor.

The present procedure for filing claims against estates of deceased persons is generally unsatisfactory for many reasons, among which are the following:

1. There is no provision by which a record is made of when the claim is presented.

2. The claim being presented to the administrator in person, or to his attorney, is sometimes lost, causing dispute as to when the actual presentation took place.

3. The administrator is required, immediately upon his appointment, to give notice to the creditors and state the time within which the claims shall be presented, and by section 1491, the time of presenting claims depends whether the estate exceeds in value the sum of ten thousand dollars. If the estate should be estimated by the administrator to be worth eleven thousand dollars, and he had published notice accordingly, and the inventory and appraisement would show a value of only nine thousand dollars, there is no provision by which the notice could be changed.

To eliminate these and other defects, I have recommended a procedure by which the claims shall be filed with the county clerk, and the statute of limitation begins from that time.

Sec. 1490. Every executor or administrator must, immediately after his letters are issued, cause to be published in some newspaper of the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the decedent, requiring all persons having claims against said deceased to file them with the necessary vouchers in the office of the clerk of the court from which

the letters were issued. Such notice must be published as often as the judge or court shall direct, but not less than once a week for four weeks. The court or judge may also direct additional notice by publication or posting. There must be added to the published notice the date of the first publication.

Sec. 1493. All claims arising upon contracts, whether the same be due, or contingent must be filed in the office of the clerk within the time limited in the notice, and any claim not so filed, is barred forever; *provided, however*, that when it is made to appear by the affidavit of the claimant, to the satisfaction of the court, or a judge thereof, that the claimant had no notice as provided in this chapter, by reason of being out of the state, it may be presented at any time before a decree of distribution is entered.

Sec. 1494. Every claim which is due, when filed must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim be not due when filed, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate be insolvent, no greater rate of interest shall be allowed upon any claim after the first publication of notice to creditors than is allowed on judgments obtained in the superior court.

Sec. 1495. Any judge of a superior court may file a claim against the estate of a decedent for allowance to the executor or administrator thereof, and if the executor or administrator allows the claim, he must in writing, designate some other judge of the superior court of the same or an adjoining county, who, upon the presentation of such claim to him, is vested with power to allow or reject it, and the judge presenting such claim, in case of its rejection by the executor or administrator, or by such judge as shall have acted upon it, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

Sec. 1496. At any time after the filing of a claim the executor or administrator may allow the same, in whole or in part, or reject the same. Such allowance or rejection must be in writing and filed with the clerk, and the clerk upon filing the same, must immediately note

the same in the register, and mail a notice thereof to the claimant at the place designated on the claim. If the claim is allowed by the executor or administrator, it must be presented to the judge of the court for his approval, who must indorse upon it his allowance or rejection, and the clerk must immediately note such allowance or rejection upon the register, and mail notice thereof to the claimant at the address designated on the claim. If the executor or administrator refuses or neglects, for the period of thirty days after the filing of the claim, to allow or reject the same, or if the judge refuses or neglects, for the period of ten days after the claim has been presented to him, to indorse his allowance or rejection thereon, such refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection thereof. Any claim filed before the expiration of the time limited in the notice for the presentation of claims is presented in time, whether acted upon within that period or not.

Sec. 1504. A judgment rendered against an executor or administrator, upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the judge; and the judgment must be that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the original docket of the judgment must be filed among the papers of the estate in court. No execution must issue upon such judgment nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment, except a lien by attachment or otherwise previously existed.

It is recommended that a new section, to be known as section 1455, be added to the Code of Civil Procedure, authorizing any bank having on deposit a sum of money not exceeding one hundred dollars to pay the same to certain persons for the liquidation of claims against such deceased person for the expenses of last sickness, etc.

This section is proposed at the suggestion of several savings banks, who find it a custom of many poor people to leave an amount in the bank sufficient to pay their funeral expenses, which amount is materially reduced by the expenses of probate procedure.

The proposed section reads as follows:

Sec. 1455. Any bank having on deposit money of a deceased person not exceeding the sum of one hundred dollars, may, thirty days after the death of such person, pay the same to any hospital, home, physician, nurse, or undertaker, upon receiving an affidavit of an officer of such hospital or home, or of such physician, nurse or undertaker, showing the death of the depositor, and that the depositor died pos-

sessed of no estate other than said deposit, and that the same at the time of the death of such depositor, did not exceed the sum of one hundred dollars, and that the balance of said deposit is to be used for the sole purpose of paying the expenses of the last sickness and funeral expenses of such depositor. If the aggregate amount of the claim so presented exceeds the sum on deposit, such deposit shall be paid to such claimants in proportion to the amount of their respective claims.

A new section of the Code of Civil Procedure, to be numbered 751a is recommended, declaring that the effect of a judgment in certain actions shall *ipso facto* have the effect of vesting the title in the particular party without the necessity of a conveyance.

The new section reads as follows:

Sec. 751a. In an action by the holder of the equitable title against the holder of the legal title to quiet title or determine adverse claims to real property, the judgment or decree shall have the effect of passing title and interest of the adverse party thereto to the party in whose favor judgment is rendered, without any act on the part of the party against whom judgment is rendered for the purpose of conveying or transferring such title and interest; and such judgment shall be considered and taken to have the same operation and effect as if a conveyance, release or acquittance had been executed by the party against whom the judgment is rendered. In like manner, in an action for specific performance, the judgment requiring a conveyance shall operate to convey the title and interest of the person whose title or interest is required to be conveyed, without the execution of any instrument or deed by him or by any commissioner or officer of the court for that purpose.

Section 726 of the Code of Civil Procedure is amended to permit a mortgagee holding additional security for the payment of the debt secured by the mortgage, such as notes or bonds, to make the person liable on such note or bond, a party to the action to foreclose.

Such revision is suggested under *Ould vs. Stoddard*, 54 Cal. 613, and *Adams vs. Wallace*, 119 Cal. 67.

The section as amended is copied substantially from section 1627 of the Code of Procedure of New York, and is as follows:

Sec. 726. There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real or personal property, which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct the sale of the encumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale to the payment of the costs of court, and the expenses of the sale, and the amount

due plaintiff, including, where the mortgage provides for the payment of attorney's fees, such sum for such fees as the court shall find reasonable, not exceeding the amount named in the mortgage.

Any person who is liable to the plaintiff for the payment of the debt secured by the mortgage, or any part thereof, may be made a defendant in the action; and if he has appeared or has been personally served with the summons, the final judgment may award payment by him of the residue of the debt, or the part thereof for which he is liable remaining unsatisfied after a sale of the mortgaged property and the application of the proceeds pursuant to the directions contained therein.

The court may, by its judgment, or at any time after judgment, appoint a commissioner to sell the encumbered property. It must require of him an undertaking in an amount fixed by the court, with sufficient sureties, to be approved by the judge, to the effect that the commissioner will faithfully perform the duties of his office according to law. Before entering upon the discharge of his duties he must file such undertaking so approved, together with his oath that he will faithfully perform the duties of his office. If it appear from the sheriff's return, or from the commissioner's report, that the proceeds are insufficient, and a balance still remains due, judgment must then be docketed by the clerk in the manner provided in this code for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien on the real estate of such judgment debtor, as in other cases in which execution may be issued.

No person holding a conveyance from or under the mortgager of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been a party to the action.

If the court appoints a commissioner for the sale of the property, he must sell it in the manner provided by law for the sale of like property by the sheriff upon execution; and the provisions of chapter one, title nine, part two, of this code are hereby made applicable to sales made by such commissioner, and the powers therein given and the duties therein imposed on sheriffs are extended to such commissioner.

In all cases heretofore, now or hereafter pending in the courts of this state, in the event of the death, absence from the state, other disability or disqualification of the commissioner appointed to sell encumbered property under the foregoing provisions of this section, the court may, upon the happening of either the death, absence from the state, other disability or disqualification of the commissioner, appoint an elisor to

perform the duties of such commissioner which are then to be performed in such action.

The elisor so appointed shall give the undertaking and take the oath hereinbefore provided to be given and taken by a commissioner, before entering upon the discharge of his duties, and shall thereafter perform all duties left unperformed by the commissioner whom he is appointed to succeed with like effect as if such duties had been performed by the commissioner.

If the land mortgaged consists of a single parcel, or of two or more contiguous parcels, situated in two or more counties, the court may, in its judgment, direct the whole thereof to be sold in one of such counties, by the sheriff, commissioner, or elisor, as the case may be, and upon such proceedings, and with like effect, as if the whole of the property were situated in that county.

**THE FOLLOWING AMENDMENTS TO THE PENAL CODE ARE
RECOMMENDED FOR THE REASONS STATED IN THE
ACCOMPANYING NOTE.**

Section 507 of the Penal Code does not directly include within its provisions, the conversion of property by conditional vendee thereof. It is proposed to remedy this defect by amending the section as follows:

See *People vs. Goodrich*, 142 Cal. 216; *Krause vs. Commonwealth*, 95 Pa. St. 418.

Sec. 507. Every person intrusted with any property as bailee, tenant, as vendee under conditional contract before title thereunder has vested, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement.

Section 532 of the Penal Code was intended, by the amendment of 1905 to change the rule announced in *People vs. Cummings*, 114 Cal. 437, but it is doubtful if the defect there pointed out is covered. Therefore, the following amendment is recommended.

The amended section reads as follows:

Sec. 532. Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets possession of money or property, or obtains the labor or service of another, is punishable in the same manner and to the same extent as for larceny of the money or of personal property of the value of the property or services obtained.

Section 269a of the Penal Code is amended by striking therefrom the words, "open and notorious."

The amended section reads as follows:

Sec. 269a. Every person who lives in a state of cohabitation and adultery is guilty of a misdemeanor, and punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both.

Sec. 269b. If two persons, each being married to another, live together in a state of cohabitation and adultery, each is guilty of a felony, and punishable by imprisonment in the state prison not exceeding five years. A recorded certificate of marriage or a certified copy

of the record thereof, there being no decree of divorce, proves the marriage of a person for the purposes of this section.

Section 1070 of the Penal Code is amended to give the people the same number of peremptory challenges as the defense in the selection of jurors.

The amended section reads as follows:

Sec. 1070. If the offense charged be punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to twenty and the state to twenty peremptory challenges. On a trial for any other offense, the defendant is entitled to ten and the state to ten peremptory challenges.

Section 995 of the Penal Code is amended by striking out subdivision four thereof. By omitting this subdivision the indictment can not be quashed for the bias or prejudice of any member of the grand jury.

The amended section reads as follows:

Sec. 995. The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases.

If it be an indictment:

1. Where it is not found, indorsed, and presented as prescribed in this code.
2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon.
3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in section nine hundred and twenty-five.

If it be on information:

1. That before filing thereof the defendant had not been legally committed by a magistrate.
2. That it was not subscribed by the district attorney of the county.

Section 1171 of the Penal Code, relating to bill of exceptions in criminal cases, is amended by changing the time in presenting a bill of exceptions for settlement to thirty days, instead of ten days after judgment has been entered.

This amendment is deemed advisable because in the very large majority of cases the bill of exceptions can not be prepared and presented for settlement within the time allowed under the section at the present time.

Sec. 1171. When the defendant desires to have exceptions taken at the trial settled in a bill of exceptions, the draft of a bill must be prepared by him, and presented to the judge for settlement within thirty days after judgment has been entered against him, or, if the judge is absent from the county, or ill, so that presentation can not be made, the draft must, within that period, be delivered to the clerk for the judge. Notice in writing of the intended presentation of such draft to the judge, or of the delivery thereof to the clerk, must be served upon the district attorney at least two days before such presentation or delivery. When received by the clerk, he must note thereon the date of such receipt, and transmit or deliver the same to the judge at the earliest period practicable. The judge must, immediately upon the draft being presented or delivered to him, designate a time for the settlement of the bill, and, if the parties are not present, require the clerk to notify them in writing of such date. The time so fixed must not be changed for inconvenience to a party, except upon good cause, shown by affidavit of necessity therefor. When settled and engrossed, the bill must be signed by the judge and filed with the clerk.

Section 971 of the Penal Code relates to the prosecution of accessories in felony cases only. The amended section includes misdemeanors to harmonize with sections 659 and 31 of the same code.

The amended section reads as follows:

Sec. 971. The distinction between an accessory before the fact and a principal and between principals in the first and second degree, in cases of felony and misdemeanor, is abrogated; and all persons concerned in the commission of a felony or misdemeanor, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment or information against such an accessory than are required in an indictment or information against his principal.

An amendment of section 954 of the Penal Code is suggested. As the same now reads there can be no joinder of offenses, except such as grow out of the same transaction, and there can be but a single conviction under the section. By the proposed amendment, a series of offenses of the same class may be prosecuted under the same indictment or information.

The amended section reads as follows:

Sec. 945. The indictment or information may charge different offenses, of the same kind and class, or different offenses growing out of the same act, transaction or event, or different statements of the same offense under separate counts. The court may in its discretion

limit the prosecution to any one or more of such offenses charged as may in its judgment be tried at one and the same time. Subject to such limitation the defendant may be convicted of any one or more of such offenses so charged.

The act of March 21, 1905 (Statutes 1905, page 652), relating to the sale of intoxicating liquors in public institutions, or in the vicinity thereof, is codified as an amendment to section 172 of the Penal Code.

The amended section reads as follows:

Sec. 172. Every person who, within two miles of the land belonging to this state upon which any state prison or reformatory is situated; or within one mile of the grounds belonging and adjacent to the University of California, or any other university, college, or institution devoted to higher education; or within one mile of the asylum building of the Mendocino State Hospital for the Insane; or within one and one half miles of the lands occupied by any home, retreat, or asylum for disabled volunteer soldiers or sailors established or to be established by this state or by the United States within this state, or within the state capitol, or within the limits of the grounds adjacent and belonging thereto, sells, gives away, or exposes for sale or consumption by others, any beer, wine, whiskey, brandy, or other vinous or alcoholic liquors, is guilty of a misdemeanor.

**THE FOLLOWING ACTS OF THE LEGISLATURE HAVE BEEN
SUPERSEDED BY SECTIONS OF THE CODES OR BY SUB-
SEQUENT ACTS AND SHOULD BE REPEALED.**

Sections 597*a*, 597*b*, 597*c*, and 597*d* of the Penal Code, relating to the importation and docking of horses' tails, are in many respects unconstitutional.

Section 597, in so far as it relates to the importation of docked horses into this state, is an interference with interstate commerce and is void. *Railroad Co. vs. Husen*, 95 U. S. 465; *Chy Lung vs. Freeman*, 92 U. S.; *People vs. Marx*, U. S. 378.

The provisions of this section prohibit any one from driving, working, using, or dealing in any unregistered docked horse, or horses, is not within the police power of the state, and would therefore be void.

See *Ex parte Hayden*, 147 Cal. 649; *Ex parte Dietrich*, 149 Cal. 106.

Sections 597*c* and 597*d* also contain the same infirmities, and all of said sections should be repealed, except 597*a*.

The act of March 20, 1905 (Statutes 1905, page 316), is in violation of article I of the constitution, and should be repealed.

See *Ex parte Dietrich*, 149 Cal. 104; *Ex parte Hayden*, 147 Cal. 649.

The act of March 19, 1889 (Statutes 1889, page 404), regulating the government of the state prisons, has been covered by sections 1572 and 1596 of the Penal Code (see Statutes 1907, page 585), and should be repealed.

The act of March 11, 1893 (Statutes 1893, page 132), authorizing the justices of the supreme court to appoint a librarian for said court, and fixing a salary, is covered by the provisions of section 2314 of the Political Code, and should be repealed.

The act of February 28, 1901 (Statutes 1901, page 75), providing for a luncheon hour for laborers in sawmills, and shingle and shake mills in logging camps, and making a violation thereof a misdemeanor, is in conflict with sections 11 and 21, of article I of the constitution of the State of California, and should be repealed.

See *Ex parte Sohncke*, 148 Cal. 262; *Ex parte Jentzsch*, 112 Cal. 468; *Bailey vs. People*, 190 Ill. 28 (60 N. E. 98).

The act of March 26, 1880 (Statutes 1880, page 15), relating to the transportation of passengers to and from foreign ports, is obsolete and should be repealed.

The act of March 27, 1872 (Statutes 1872, page 622), legalizing applications made to purchase state lands, is obsolete and should be repealed.

The act of March 30, 1874 (Statutes 1874, page 938), relating to discrimination against female teachers, is repealed as being obsolete and unnecessary.

The act of March 21, 1905 (Statutes 1905, page 711); regulating the lending of money on personal property by corporations violates article IV, section 25, subdivision 23 of the constitution, and should be repealed.

See *Ex parte Sohncke*, 148 Cal. 262; *Slocum vs. Bear Valley Irrigation Co.*, 122 Cal. 555; *Johnson vs. Goodyear Rubber Company*, 127 Cal. 4.

The act of April 23, 1880 (Statutes 1880, page 136), relating to procedure in actions to recover delinquent taxes, has been superseded by section 3899 of the Political Code, and is recommended for repeal.

The act of March 12, 1880, page 8, recited in Henning's General Laws, page 66, relating to currency of the United States, is entirely obsolete, as all of the provisions of the act are fulfilled by the laws of congress.

See *Lick vs. Faulkner*, 25 Cal. 404.

The act of March 24, 1905 (Statutes 1905, page 372), creating the office of sheep inspector, has been superseded by the later act of March 23, 1907, page 905, and should be repealed.

The act of March 21, 1899 (Statutes 1899, page 158), relating to members of the national guard who volunteered service in the Spanish-American war, has served its purpose and should be repealed.

The act of February 27, 1893 (Statutes 1893, page 30), to prevent combinations to obstruct the sale of live stock, has been covered by the Cartwright Act of March 23, 1907, and should be repealed.

The act of March 31, 1891 (Statutes 1891, page 473), to prevent destruction of property by fire, is superseded by section 384a of the Penal Code, and should be repealed.

The act of March 23, 1875-6 (Statutes 1875-6, page 408), has been superseded by sections 608, 384c, and 384b of the Penal Code, and should be repealed.

For the same reason the act of March 16, 1872 (Statutes 1871-2, page 384), should be repealed.

The act of April 1, 1878 (Statutes 1877-8, page 963), authorizing the managers of orphan asylums to consent to the adoption of children under their care, has been superseded by section 224 of the Civil Code, and should be repealed.

The act of March 23, 1893 (Statutes 1893, page 234, ch. CXC), relating to the removal of human remains from cemeteries, is contrary to the provisions of article XI, sections 11-12 of the constitution, and should be repealed.

See *Darcey vs. Mayor*, 104 Cal. 642.

The act of March 20, 1899 (Statutes 1899, page 146), providing an expert for the controller, has been superseded by section 439 of the Political Code as amended February 3, 1905 (Statutes 1905, page 785), and should be repealed.

The act of February 17, 1897 (Statutes 1897, page 12), regulating the medical practice, to prevent blindness in infants, is obsolete, impracticable, and seems to be a dead letter, and should be repealed.

The act of March 16, 1901 (Statutes 1901, page 324), relating to license tax on bicycles, seems to have become obsolete in all respects, except such parts thereof as are included in section 524 of the Civil Code, and should be repealed.

The act of March 10, 1891 (Statutes 1891, page 210), regulating the sale of imitation olive oil, as amended March 23, 1893, has been superseded by the act of March 11, 1907 (Statutes 1907, page 208), and should be repealed.

The act of March 15, 1899 (Statutes 1899, page 103), relating to suits to abate public nuisances, has been superseded by section 731 of the Code of Civil Procedure, and should be repealed.

The act of March 26, 1895 (Statutes 1895, page 131), known as the Insolvency Act has been superseded by the Federal Bankruptcy Act.

The act of March 24, 1873-4 (Statutes 1873-4, page 707), relating to attorney's fees in foreclosure cases, has been superseded by section 726 of the Code of Civil Procedure, and should be repealed.

The act of March 15, 1901 (Statutes 1901, page 296), relating to the meeting place of high school boards within municipal corporations,

is included in subdivision 10 of section 1670 of the Political Code, and should be repealed.

The act of February 9, 1878 (Statutes 1877-8, page 73), relating to special elections, has been superseded by sections 1116 and 1205 of the Political Code, and should be repealed.

The act of March 15, 1907 (Statutes 1907, page 300), relating to trespass of animals upon private lands in certain counties of California, is in violation of section 25 of article IV of the constitution, and should be repealed.

The act of March 10, 1887 (Statutes 1887, page 82), relating to the wearing of badges of the Grand Army of the Republic, has been superseded by section 538*b* of the Penal Code, and should be repealed.

The act of April 15, 1880 (Statutes 1880, page 75), has served its purpose and should be repealed.

The act of March 8, 1872 (Statutes 1871-2, page 304), relating to hunting and shooting on private grounds, has been superseded by section 627 of the Penal Code.

The act of March 20, 1905, exempting all licenses of ex-Union soldiers and sailors of the civil war, is special legislation, contrary to the constitution, and should be repealed.

The act of March 27, 1878 (Statutes 1877-8, page 563), to protect bee keeping in the county of San Bernardino, is unconstitutional, and should be repealed.

The act of March 26, 1895 (Statutes 1895, page 163), relating to suits against cities and counties, has been included in the act of March 23, 1901 (Statutes 1901, page 794), and should be repealed.

The act of March 27, 1895 (Statutes 1895, page 238), providing a clerk in the office of the superintendent of public instruction, has been included in section 515*a* of the Political Code, and should be repealed.

The act of March 20, 1899 (Statutes 1899, page 148), relating to encampments of the national guard, has been superseded by section 2005 of the Political Code, and should be repealed.

The act of April 15, 1880 (Statutes 1880, page 75), is covered by the subsequent act of March 23, 1901 (Statutes 1901, page 577), and should be repealed.

The act of March 30, 1871-2 (Statutes 1871-2, page 796), providing for public administrators in certain cases, has been superseded by section 996 of the Political Code, and subdivision 19 of section 4041 of the Political Code, and should be repealed.

The act of March 18, 1885 (Statutes 1885, page 216), to establish a state board of silk culture has become obsolete, and should be repealed.

The act of March 21, 1905 (Statutes 1905, page 711), regulating the lending of money on personal property by corporations, violates article IV, section 25, subdivision 23 of the constitution, and should be repealed.

See *Slocum vs. Bear Valley Irrigation Company*, 122 Cal. 555; *Johnson vs. Goodyear Rubber Company*, 127 Cal. 4.

The act of March 20, 1905, regulating the rates of interest and charges on loans, has been declared unconstitutional, and is recommended that the same should be repealed. *Ex parte Sohncke*, 148 Cal. 262.

The act of April 3, 1876 (Statutes 1875-6, page 759), concerning the ventilation of sleeping apartments, is covered by section 401a of the Penal Code, and should be repealed.

The act of March 20, 1903 (Statutes 1903, page 338), providing for the marking, branding, or labeling of boxes, barrels, or packages containing fruits, is in violation of article 1, section 1 of the constitution of the State of California, and should be repealed.

See *Ex parte Hayden*, 147 Cal. 649.

The act of March 23, 1901 (Statutes 1901, page 664), providing for prosecuting attorneys of police courts in cities of the second class, is in conflict with article IV, section 25, subdivision 28 of the constitution, and should be repealed.

See *San Francisco vs. Broderick*, 125 Cal. 188.

The act of March 30, 1874 (Statutes 1873-4, page 937), providing for the appointment of certain permanent employees of the state capitol, has been superseded by the provisions of the Political Code, and should be repealed.

The act of February 14, 1891 (Statutes 1891, page 4), providing for the levy and collection of taxes by and for school districts, except in municipal corporations of the first class, has been superseded by sections 1830 to 1839 of the Political Code, and should be repealed.

The act of April 15, 1880 (Statutes 1880, page 77), relating to the intoxication of officers and providing a penalty therefor is codified as section 773 of the Penal Code.

The new section reads as follows :

Sec. 773. Any officer of a town, village, city, county or state, who shall be intoxicated while in discharge of the duties of his office, or by reason of intoxication is disqualified for the discharge of, or neglects his duties, shall be guilty of a misdemeanor, and on conviction of such misdemeanor shall forfeit his office; and in such case the vacancy occasioned thereby shall be filled in the same manner as if such officer had filed his resignation in the proper office, and it had been accepted by the proper authority; *provided*, such acceptance shall have been necessary to make the office vacant.

The act of March 23, 1901 (Statutes 1901, page 603), relating to estrays and providing for taking up and impounding the same, and sales thereof, is codified as sections 1873-1874, 1875, 1876, and 1877 of the Civil Code.

The new sections read as follows :

Sec. 1873. Any person finding any stray domestic animal or animals upon his premises, or upon the premises to which he has the right of possession, or upon highways adjacent thereto, may take up and impound them in a secure and suitable place, and within five days thereafter must file with the county recorder of the county in which such animal or animals have been taken up, a notice of such impounding, with a description of the animal or animals so impounded, giving the marks, brands, color, sex, and any other visible means of identification, together with the probable value of each animal, and a statement of the time and place of their being taken up and where confined. The county recorder shall receive for filing said notice the sum of fifty cents.

Sec. 1874. If no person appears and claims such animal or animals or possession thereof within thirty days after the date of the filing of the notice specified in section eighteen hundred and seventy-three, or having so appeared and claimed such animal or animals, or the possession thereof, but have failed or refused to pay the fees, costs, and expenses provided in section eighteen hundred and seventy-six, it shall be the duty of the person having taken up such animal or animals, to notify in writing a constable of the township in which said animals are held, or there being no constable in said township, or he be absent therefrom, or can not be found, then the sheriff of the county in which said animal or animals taken up, which notice shall specify that the provisions of this chapter have been complied with, and that no person has appeared and claimed such animal or animals, or having so appeared has failed to pay the fees, costs and expenses of taking up and caring for the same, and requiring said constable or sheriff to proceed to sell such animal or animals at public sale. Any constable or sheriff receiv-

ing said notice shall immediately proceed to sell such animal or animals at public sale in conformity with the law concerning sales of personal property on execution (except that at least ten days' notice thereof shall be given and each animal shall be sold singly), and shall be entitled to the same fees as are provided by law from the sale of personal property on execution.

Sec. 1875. The party taking up such animal or animals shall be entitled to receive only the following fees, costs, and expenses before releasing the same, to be estimated as follows:

1. For taking up and impounding each animal, five cents;
2. The amount paid for filing the notice required by section eighteen hundred and seventy-three.
3. For keep and care of such animal or animals while the same are legally impounded and in his possession the following:

For each horse, mule, jenny, ass, bull, ox, steer, or calf, fifteen cents per diem;

For each sheep, goat, hog, or other animal not hereinbefore specified, five cents per diem; *provided, however*, that if such animal or animals have not been properly fed or watered during the time they have been impounded, no charge shall be allowed or collected therefor.

Sec. 1876. Any person claiming such animal or animals, and who has been refused the possession thereof, may at any time before the sale thereof, commence an action in the proper court to recover the possession of such animal or animals, and any sale of property shall thereupon be postponed until the determination of such action. The law and procedure relating to claim and delivery of personal property, shall govern such action so far as applicable thereto. In any such action the defendant shall be entitled to his costs the same as in other civil actions and shall have a lien upon said property therefor.

Sec. 1877. The money received from the sale of any animal or animals under the provisions of section eighteen hundred and seventy-four and section eighteen hundred and seventy-five of this code shall be applied as follows:

1. To the payment of the fees of the officer making such sale.
2. The payment to the person taking up such animal or animals his fees, expenses, and costs as provided in section eighteen hundred and seventy-six of this code.
3. The surplus, if any, shall be paid into the county treasury, together with a statement of the prices received for each animal sold, to be held for the owner of such animal or animals for sale of which it was received. If such owner shall, within one year thereafter, prove to the satisfaction of the board of supervisors of the county in which such animal or animals were sold, that he, or they, were the owners of said animals at the

time the same were taken up or sold, or to any part thereof, the said board of supervisors shall order such sum, or the proportionate part thereof, to be paid over to such person or persons. Any part of said fund that has not been claimed, or if claim has not been allowed by the board of supervisors within one year after the receipt thereof by the treasurer, shall be paid into and become a part of the common school fund of said county.

The act of March 31, 1891, page 219, relating to the working, rights of way, easement, and drainage of mines in the State of California, is codified as section 1443 of the Civil Code.

The new section reads as follows :

Sec. 1443. Whenever any mine owner, company, or corporation shall have performed the labor and made the improvements required by law for the location and ownership of mining claims or lodes, such owner, company, or corporation shall file or cause to be filed, within thirty days after the time limited for performing such labor or making such improvements, with the county recorder of the county in which the mine or claim is situated, an affidavit particularly describing the labor performed and improvements made, and the value thereof, which affidavit shall be prima facie evidence of the facts therein stated. Upon the failure of any claimant or mine owner to comply with the conditions of this act in the performance of labor, or making of improvements upon any claim, mine, or mining ground, the claim or mine upon which such failure occurred shall be opened to relocation in the same manner as if no location of the same had ever been made; but, if previous to relocation, the original locators, their heirs, assigns, or legal representatives, resume work upon such claim, and continue the same with reasonable diligence until the required amount of labor has been performed or improvements made, and the required statement of accounts and affidavits filed with the county recorder, then the claim shall not be subject to relocation because of previous failure to file accounts. Upon the failure of any one of the several co-owners to contribute his portion of the expenditures required hereby, the co-owners who have performed the labor or made the improvement may, at the expiration of the year, give such delinquent co-owner personal notice, in writing, or by publication in the newspaper published nearest the claim, for at least once a week for ninety days; and if, at the expiration of ninety days after such notice in writing or publication, such delinquent shall fail or refuse to contribute his portion of the expenditures required by this section, his interest in the claim shall become the property of his co-owners who made the required expenditures. A copy of such notice, together with an affidavit showing personal service or publication, as the case may be of such notice, when

filed or recorded with the recorder of the county in which such mining claim is situated, shall be evidence of the acquisition of title of such co-owners. Where a person or company has or may run a tunnel or cuts for the purpose and in good faith for the purpose of developing a lode, lodes, or claims owned by said person, or company, or corporation, the money so expended in running said tunnel shall be taken and considered as expended on said lodes or claims; *provided further*, that said lode, claim, or claims shall be distinctly marked on the surface as provided by law. All mining locations and mining claims shall be subject to a reservation of the right of way through or over any mining claims, ditches, roads, canals, cuts, tunnels, and other easements for the purpose of working other mines; *provided*, that any damage occasioned thereby shall be assessed and paid for in the manner provided by law for land taken for public use under the right of eminent domain.

The act of February 28, 1903 (Statutes 1903, page 58), relating to assaults upon certain officers of the United States, is codified as follows: Section 2 thereof as section 186 of the Penal Code and section 1 thereof as section 183 of the Penal Code.

The new sections read as follows:

Sec. 186. Every person who attempts to kill, or who commits any assault upon the president or vice-president of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison not less than ten years.

Sec. 183. If two or more persons conspire to commit any crime against the person of the president or vice-president of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States, they are guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison not less than ten years.

The acts of March 13, 1903 (Statutes 1903, page 139), relating to cruelty to animals, is codified as an amendment to section 597 of the Penal Code.

The amended section reads as follows:

Sec. 597. Every person who maliciously kills, maims, or wounds an animal, the property of another, or who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so over-

driven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink or shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever having the charge or custody of any animal, either as owner or otherwise, uses thereon what is known as the bristle bur, tack bur, or other like device, by whatsoever name known or designated, on any said horse or other animal for any purpose whatsoever, or who otherwise subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the same, or in any manner abuses any animal, or fails to provide the same with proper food, drink, shelter, or protection from the weather, or who cruelly drives, rides, or otherwise uses the same when unfit for labor, is for every such offense guilty of a misdemeanor.

The act of March 16, 1903 (Statutes 1903, page 156), relating to ferries across navigable rivers between counties, is codified as section 2882 of the Political Code.

The new section reads as follows:

Sec. 2882. When a navigable river forms a boundary between two counties of this state, the boards of supervisors of such counties are hereby given the power to establish and operate a ferry or ferries across such stream. Each of such counties shall pay such proportion of the expenses of establishing and operating said ferry or ferries as may be agreed upon by the boards of supervisors of such counties. In case either of said counties shall refuse to enter into an agreement to establish and operate such ferry or ferries, the county situated upon the opposite bank of such river may establish and operate a ferry or ferries across such river, and such county is hereby empowered to acquire landing places for such ferry or ferries on the bank of such river opposite the boundary of such county, and may pay the expense of establishing and operating said ferry or ferries out of the general road fund of such county.

The act of March 8, 1905 (Statutes 1905, page 88), relating to charges of city justices against counties, is codified as section 4326 of the Political Code.

The new section reads as follows:

Sec. 4326. In no case shall the fees of a city justice of the peace, town or city recorder, or city or town marshal, for services in any criminal action, be a charge against the county.

The act of March 23, 1893 (Statutes 1893, page 302), relating to contagious diseases of domestic animals, is codified as section 374a of the Penal Code.

The new section reads as follows:

Sec. 374*a*. Any person or persons, company, or corporation, owning or having possession or control of any animal affected by any contagious or infectious disease, who shall fail to keep the same within an inclosure, or herd the same in some place where they will be secure from contact with other animals of like kind not so affected, or who shall suffer such infected animals to be driven on the public highway or to range where they will be likely to come in contact with other animals not so affected, shall be guilty of a misdemeanor, and, on conviction, punished by a fine of not more than five hundred dollars for each offense.

Sections 1867 and 1868 of the Political Code, relating to disturbing schools and insulting teachers, are penal in character, and should be combined as section 653*b* of the Penal Code.

The new section reads as follows:

Sec. 653*b*. Any person who willfully disturbs any public school, or any public school meeting, or who upbraids, insults, or abuses any teacher, in the presence of the school, shall be guilty of a misdemeanor, and be liable to a fine of not less than ten nor more than one hundred dollars.

The act of March 23, 1893 (Statutes 1893, page 235), relating to the preservation of hides of slaughtered animals, is amended and codified as section 139 (new) of the Penal Code.

The new section reads as follows:

Sec. 139. Any person who shall at any time kill or slaughter any cow, heifer, calf, steer, or bull, shall retain and keep, in his possession the hides taken off said animals, with the ears attached thereto, without any alterations or disfigurations of the brands or marks on said hide or ears for the period of ten days, and upon demand produce the same for the inspection of any person during said period. Any person or persons who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty dollars nor more than one hundred dollars, or be imprisoned in the county jail for any term not less than ten days nor more than ninety days, or by both such fine and imprisonment.

The act of March 19, 1889 (Statutes 1889, page 352), is codified as section 172*a* of the Penal Code.

The new section reads as follows:

Sec. 172*a*. Any person who, after receiving notice in writing that a person named in said notice is addicted to the inordinate use of intoxicating liquors, should the person named in said notice be so addicted, shall thereafter within a period of twelve months, furnish to

said person so addicted to the inordinate use of intoxicating liquors any spirituous liquors, wines, or intoxicating or malt liquors, shall be guilty of a misdemeanor, and punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding two hundred dollars, or by both such fine and imprisonment; *provided, however*, that nothing herein shall prohibit any regularly licensed physician from furnishing or prescribing said liquors in case of sickness.

The act of March 23, 1901 (Statutes 1901, page 553), relating to the unlawful administering of drugs to animals on exhibition, is amended and codified as sections 596*a* and 596*b* of the Penal Code.

The new sections read as follows:

Sec. 596*a*. Any person or persons, who, except for medicinal purposes, administers any poison, drug, medicine, or other noxious substance to any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animals, or other live stock, entered or about to be entered in any race or upon any race course in the State of California, or entered or about to be entered at or with any agricultural park, or association, race course, or occupation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward; or to expose any such poison, drug, medicine, or noxious substance, with intent that the same shall be taken, inhaled, swallowed, or otherwise received by any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other live stock, with intent to impede or affect the speed, endurance, sense, health, physical condition, or other character or quality or the appearance of such above mentioned animal, or other live stock, is guilty of a misdemeanor.

Sec. 596*b*. Any person or persons who cause to be taken by or placed upon or in the body of any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other live stock, entered or about to be entered in any race upon any race course in the State of California, or entered or about to be entered at or with any agricultural park, association, race course or corporation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, any sponge wood, or foreign substance of any kind, with intent to impede or affect the speed, endurance, sense, health, physical condition of such horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other live stock, is guilty of a misdemeanor.

The act of 1897, page 439, providing for the organization and management of county fire insurance companies, approved April 1, 1897, is carried into the Civil Code as sections 433, 434, 435, 436, 436*a*, 436*b*, 436*c*, 436*d*, 436*e*, 436*f*, 436*g*, 436*h*, 436*i*, and 436*j* (new sections).

The new sections read as follows:

Sec. 433. Any number of persons, not less than twenty-five, residing in any county in this state, owning insurable property aggregating not less than fifty thousand dollars in value, which they desire to have insured, may incorporate for the purpose of mutual insurance against loss or damage by fire. Such persons shall file with the insurance commissioner a declaration of their intention to incorporate for the purposes expressed in section 433 of this chapter, which declaration shall be signed by all of the incorporators, and shall contain a copy of the articles of incorporation proposed to be adopted. The insurance commissioner shall examine the proposed articles of incorporation, and if they conform to the requirements of the law, he shall deliver to such persons a certificate permitting them to incorporate as such insurance company. Such certificate shall be directed to the clerk of the county in which such corporation is proposed to be organized, and shall contain a copy of the proposed articles of incorporation. Upon filing with the county clerk duly executed articles of incorporation, and filing with the secretary of state the certified copies of the duly executed articles of incorporation, as required by section two hundred and ninety-six of the Civil Code of the State of California, and of the certificate above provided for, the secretary of state shall thereupon issue a certificate of incorporation to such county insurance company, and upon organizing under such articles of incorporation, such county fire insurance company may carry on a fire insurance business as hereinafter provided. The articles of incorporation and the charter or certificate obtained by any county fire insurance company operating under the provisions of this chapter shall be subject to the control and modification by the legislature of the State of California. The by-laws and all amendments thereto shall be filed with the insurance commissioner within sixty (60) days after their adoption.

Sec. 434. The number of directors shall not be less than (7) seven nor more than eleven (11), a majority of whom shall constitute a quorum to do business. These directors shall be elected from the members of the association by ballot, and shall hold office for one year, or until their successors are elected and qualified. The annual meeting of the members of the company shall be on the second Monday in January of each year. In the election of the first board of directors each member shall be entitled to one vote. At every subsequent election, every person insured shall be entitled to as many votes as there are directors to be elected, and an equal additional number for every risk or risks he holds in the company, and he may cast the same in person or by proxy, distributing them among the directors to be elected, or among a less number of directors, or cumulating them upon one candidate, as he shall see fit. The directors shall elect, from their

own number, a president and a vice-president, and shall also elect a treasurer and a secretary, who may or may not be members of the company. All of such officers hold their office for one year from the date of their election, and until their successors are elected and qualified. The treasurer and secretary shall give bonds to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the board of directors.

Sec. 435. Such corporation and its directors shall possess the usual powers, and be subject to the usual duties of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution and the laws of this state, as may be deemed necessary for the management of its affairs in accordance with the provisions of this chapter; also to prescribe the duties of its officers and to fix their compensation, and to alter and amend its by-laws, when necessary. Any person owning property in the county for which any such company is formed may become a member of such company by insuring therein, and shall be entitled to all the rights and privileges appertaining thereto, and no person not residing in the county in which the company is formed, or any person owning property in any county adjoining the county wherein such company is formed, as hereinafter provided, shall become a director of such company.

Sec. 436. Such company may issue policies only on detached dwellings, schoolhouses, churches, barns (except livery and hotel barns), and other farm buildings, and such property as may be contained therein; also other property on the premises owned by the insured; hay and grain in stack or in the field, and live stock on the premises of the insured, anywhere in the county, for any time not exceeding five years, and not to extend beyond the time limited for the existence of the charter, and for an amount not to exceed four thousand five hundred dollars on any one risk; *provided*, that no company which has been organized more than six months shall write insurance subject to one fire exceeding three per cent of the amount at risk upon the books of such company. All persons so insured shall give their obligation to the company, binding themselves, their heirs and assigns, to pay their pro rata share to the company of the necessary expense and of loss by fire which may be sustained by any member thereof during the time for which their respective policies are written, and they shall also at the time of effecting the insurance pay such a percentage in cash, and such other charges as may be required by the rules or by-laws of the company.

436a. All such companies must classify the property insured therein at the time of issuing policies thereon under different rates, corresponding as nearly as may be to the greater or less risk from fire loss which may be attached to the several kinds of property insured.

436b. No such company shall insure any property beyond the limits of the county within which the company is organized, except that a company may insure in an adjoining county to the amount of fifty-five thousand dollars and no more, where no mutual company exists, or is organized therein, and as soon as a mutual company shall organize therein, said company first insuring, and with its original place of business in an adjoining county, shall, as soon as its policies originally issued expire or shall be canceled, retire therefrom, nor shall any company issue policies of insurance on any property within the limits of any city containing over six thousand inhabitants at the time of the organization of such company; *provided*, that no dwelling shall be insured within the corporate limits of any city or town exposed by any other building within one hundred feet, or by any other risk than a dwelling or private barn, within two hundred feet of the risk assumed; *provided*, that the amount of insurance shall not exceed seventy-five per cent of the value of the property and that no additional insurance shall be allowed.

436c. Every member of such company who may sustain loss or damage by fire shall immediately notify the president, or in his absence, the secretary thereof, stating the amount of damages or loss sustained or claimed, and if not more than five hundred dollars, then the president and secretary shall proceed to ascertain the amount of such loss or damage, and adjust the same. If the claim for damage or loss be an amount greater than five hundred dollars, then the president of such company, or in his absence, the vice-president, or in the absence of both, the secretary thereof, shall forthwith convene the board of directors of such company, whose duty it shall be when convened to appoint a committee of not less than three disinterested members of such company to ascertain the amount of such damage or loss. If, in either case, there is a failure of the parties to agree upon the amount of such damage or loss, they shall submit the question of the amount of such loss to arbitration. The president of the company shall appoint one disinterested person to act as an arbitrator and the claimant or insured shall appoint another, and if such two arbitrators fail to agree upon the amount of such loss, then they shall select a third disinterested person to act with them. Such arbitrators so appointed shall have full authority to examine witnesses, and to do all other things necessary to the proper determination of the amount of loss sustained by the claimant, and shall make their award in writing to the president of such company, and such award so as aforesaid made shall be final as to the amount of the loss sustained. The pay of the said committee shall be three (\$3) dollars per day for each day's services so rendered, and five cents for each mile necessarily traveled in the discharge of their duties, which shall be paid by the claimant, unless the award of such committee shall exceed the sum offered by

the company in liquidation of such loss or damage, in which case such expense shall be paid by the company.

436d. When the amount of any loss shall have been ascertained, which exceeds in amount the cash funds of the company, the president shall convene the directors of said company, who shall make an assessment upon all the property to the amount for which each several piece of property is insured, taken in connection with the rate of premium under which it may be classified; *provided, further*, that the board of directors may at their annual meeting levy an assessment not to exceed twenty-five cents on the one hundred dollars on first class insurance and a pro rata amount on other classes and said sum so raised shall constitute a reserve fund to be used in emergency cases only and another assessment for this fund shall not be made while this reserve remains intact.

436e. It shall be the duty of the secretary, whenever such an assessment shall have been made, to immediately notify every person holding a risk in such company, personally, by an agent, or by letter directed to his usual post office address, of the amount of such loss and the sum due from him, as his share thereof, and of the time and to whom such payment is to be made; but such time shall not be less than thirty days, nor more than ninety days, from the date of such notice.

436f. An action may be brought against any member of such company who shall neglect or refuse to pay any assessment made upon him by the provisions of this chapter, or other liabilities due the company, and the directors of any company so formed who shall willfully refuse or neglect to perform the duties imposed upon them by law or by the by-laws of the company shall be liable in their individual capacity to the person sustaining such loss. An action may also be brought and maintained against any such company by members thereof for losses sustained if payment is withheld after the amount of such losses have been determined, and is due by the terms of the policy.

436g. It shall be the duty of the secretary to prepare an annual statement, showing the condition of such company on the thirty-first day of December, and present the same at the annual meeting.

436h. Any member of such company may withdraw therefrom by surrendering his policy for cancellation at any time while the organization continues the business for which it was organized, by giving notice in writing to the secretary thereof and paying his share of all claims that may exist against such company; *provided*, that the company shall have power to cancel or terminate any policy by giving the insured five days' written notice to that effect, and returning to him any excess of premium he may have paid during the term of the policy, over the cost of his insurance, as measured by the rates of standard fire insurance companies doing business in this state.

436i. It shall be the duty of the president and secretary, within thirty days after the first day of January in each year, to prepare, under their own oath, and transmit to the insurance commissioner, a statement of the condition of the company on the last day of the month next preceding the annual meeting. If, upon examination, the insurance commissioner finds that such company is doing business correctly, in accordance with the provisions of this chapter, he shall thereupon furnish the company his certificate, which shall be deemed authority to continue business during the ensuing year, subject, however, to the provisions of this chapter. For such examination and certificate the company shall pay one dollar. Each company shall pay, at the time of organization, five dollars to the insurance commissioner for all services which he shall render in the matter of organization.

436j. Any such company may be proceeded against and dissolved in the manner and upon the same conditions as provided in case of other insurance companies incorporated in this state.

The act of April 18, 1859, as amended January 13, 1864, and the acts of 1891 and 1899 supplementary thereto, are codified as follows: Section 8 thereof is codified by amendment of section 296 of the Penal Code.

The new section reads as follows:

Sec. 296. Every person who willfully and maliciously destroys, mutilates, defaces, injures, or removes, any mausoleum, tomb, monument, gravestone, building, or other structure, placed in any cemetery, or any fence, railing, coping, or other work, for the protection or ornament of said cemetery, or any part thereof, or of any tomb therein, or who destroys, cuts, breaks, or injures any tree, shrub, or plant within such cemetery, shall be deemed guilty of a misdemeanor.

The act of March 20, 1905 (Statutes 1905, page 388), relating to payments on state lands, is codified as section 3575 of the Political Code.

The new section reads as follows:

Sec. 3575. Whenever it shall appear by final decree of any court of competent jurisdiction that title to any lands subject to sale by the State of California was obtained, or sought to be obtained, by fraudulent means, or in any manner contrary to the laws of this state relating to the acquisition of its public domain, all payments made in the interest of said fraudulent title shall revert to the State of California without suit, and it shall thereupon become the duty of the state surveyor general and ex officio register of the state land office to cancel all evidence of title to any land embraced in such fraudulent or invalid location, and to restore said land to public entry.

The act of March 31, 1880 (Statutes 1880, page 19), relating to writs and process issued by new courts before they have seals, is codified as section 80 of the Code of Civil Procedure.

The new section reads as follows:

Sec. 80. No writ, process, or certificate issued by any superior court, or the clerk thereof, before such court shall have been legally provided with a seal, shall be invalid, if in other respects valid, by reason of the absence of a lawful seal; but every such writ, process, or certificate, whether under the seal of one of the courts abolished on the first day of January, 1880, or under the private seal of the clerk, or under any other seal, or issued without a seal, shall have the same validity as if it had been authenticated by a legally adopted seal of the court out of which or by whose clerk it was issued.

The act of March 20, 1874 (Statutes 1874, page 2), prohibiting the collection of accounts for liquors sold at retail, is codified as section 3434 of the Civil Code.

The new section reads as follows:

Sec. 3434. The purchase of, or the sale and delivery of any spirituous or malt liquors, wine, or cider, by retail, or by the drink, is hereby declared to be an invalid consideration for any promise to pay, or assumpsit of account therefor, when the amount of such account or demand exceeds five dollars; and no court shall, in any action at law, render judgment for a greater amount than five dollars, for the sale at retail, or by the drink, of any spirituous or malt liquors, wine, or cider, together with costs.

The act of March 10, 1891 (Statutes 1891, page 70), relating to the insurance of property belonging to the state, should be codified as section 3236 of the Political Code.

The new section reads as follows:

Sec. 3236. No property belonging to this state shall hereafter be insured against risk of damage or destruction by fire, and no policy of fire insurance now existing upon any property belonging to this state shall be renewed at the expiration thereof, except the state printing office and its contents.

The act of March 23, 1893 (Statutes 1893, page 285), should be codified as section 689 of the Political Code.

The new section reads as follows:

Sec. 689. No officer or employee in the service of the state shall have power to create any deficiency in excess of any appropriation of money made by law, except in case of actual necessity, and only then upon the

written authority, first obtained, of the governor, secretary of state, and attorney general; and any indebtedness attempted to be created against the state in violation of the provisions of this act shall be absolutely null and void, and shall not be allowed by the state board of examiners.

The act of March 6, 1872 (Statutes 1871-2, page 282), was codified as follows: Section 1 by amendment of section 502, and section 2 by amendment of section 502*a* of the Penal Code.

The amended sections read as follows:

502*a*. Every person who shall convert any manner of real estate into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of larceny, and upon conviction thereof, shall be punishable by imprisonment in the state prison for any term not less than one year nor more than fourteen years.

502*b*. Every person who shall convert any manner of real estate, of the value of under fifty dollars, into personal property, by severing the same from the realty of another with felonious intent, and shall so steal, take, and carry away the same, shall be deemed guilty of petit larceny, and upon conviction thereof shall be punishable by imprisonment in the county jail for a period not more than one year or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

The act of March 16, 1901 (Statutes 1901, page 515), relating to the powers of the state board of prison directors, is codified as sections 1597 and 1598 (new) to the Penal Code.

The new sections read as follows:

Sec. 1597. The state board of prison directors are authorized and empowered to purchase California grown hemp, to be used in the manufacture of grain bags, and to pay for the same from the revolving fund created by law for the purchase of jute. The price for which grain bags made at said prison from hemp shall be sold shall be fixed by the state board of prison directors, in the same manner as the price of bags made from jute is now by law fixed by said board.

Sec. 1598. The costs and expenses of all trials which have heretofore been had in the county in this state where the state prison is situated, for any crime committed by any convict in the state prison, and the costs of guarding and keeping such convict, and the execution of the sentence of said convict by said county, and the costs and expenses of all trials heretofore had for the escape of any convict from the state prison, and the costs and expenses of all coroner inquests heretofore had of any convict at the state prison by the county where said prison

has been situated shall be certified to by the county clerk of said county wherein said trials and inquests have been held to the board of state prison directors for their approval, and after such approval they shall pay the same out of the money appropriated for the support of the state prison to the county treasurer of said county where said trials have been had; *provided*, that this act shall not apply to any costs or expenses incurred since January first, eighteen hundred and seventy-three. This section shall only apply to cases which have not been settled for by the state.

The act of March 9, 1893 (Statutes 1893, page 109), relating to claims of counties against the state, is codified as section 3881 (new) of the Political Code.

The new section reads as follows:

Sec. 3881. On the presentation of the claim of any county in this state, or treasurer thereof, to the state controller for commissions, charges, or fees fixed or directed to be allowed by law for the collection of state taxes, the said commissions, charges, or fees for which claim is made, not having been allowed by the state, and the same having been paid into the state treasury, thereupon the state controller shall, in the next settlement thereafter to be made with the treasurer of the county presenting such claim, allow to be retained out of any moneys then in the hands of such treasurer belonging to the state the amount of such claim; *provided, however*, that the moneys thus retained shall be paid into the county treasury, and shall be the property of such county.

The act of February 13, 1872 (Statutes 1871-2, page 96), to prevent the destruction of forests by fires on public lands, is codified by including the same in the provisions of section 384*a* of the Penal Code, covering the same subject-matter.

The section as amended reads as follows:

Sec. 384*a*. Any person or persons who shall willfully and deliberately set fire to any wooded country or forest belonging to this state, or the United States, within this state, or to any place from which fire shall be communicated to any such wooded country or forest, or who shall accidentally set fire to any such wooded country or forest, or to any place from which fire shall be communicated to any such wooded country or forest, and shall not extinguish the same, or use every effort to that end, or who shall build any fire, for lawful purpose or otherwise, in or near any such wooded country, or forest, and through carelessness or neglect shall permit said fire to extend to and burn through such wooded country or forest, shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdiction shall be punishable by fine not exceeding one thousand dollars or imprisonment not

exceeding one year, or by both such fine and imprisonment; *provided*, that nothing herein contained shall apply to any person who in good faith shall set a back-fire to prevent the extension of a fire already burning. All fines collected under this act shall be paid into the county treasury for the benefit of the common school fund of the county in which they are collected.

The acts of March 13, 1883 (Statutes 1883, page 298), providing for the disposal of surplus moneys in the building fund of school districts, is codified as section 1892 (new) of the Political Code.

The new section reads as follows:

Sec. 1892. All moneys that have been or shall be raised by special tax for the purpose of erecting school buildings, that shall remain in the hands of the county treasurer after all bonds that have been or may be issued on account of such buildings shall have been redeemed, and all other indebtedness arising on account of such buildings shall have been liquidated, shall be placed in the county school fund of the school district for which such moneys were raised, subject to the order of the trustees of said district.

The act of March 16, 1903 (Statutes 1903, page 163), relating to the change of name of school districts, is codified as section 1575*a* of the Political Code (new).

The new section reads as follows:

Sec. 1575*a*. Whenever a petition shall be presented to the board of supervisors, signed by at least fifteen qualified electors of said district, asking that the name of any school district be changed, the said board of supervisors shall designate a day upon which they will act upon such petition, which day must not be less than ten days nor more than forty days after the receipt thereof. The clerk of the said board of supervisors must give notice, by sending by registered mail to each of the trustees of such school district, a notice of the time set for the hearing of said petition, which notice must be mailed at least ten days before the day set for hearing; whereupon, the board shall by resolution either grant or deny the petition, and if granted, the clerk shall notify the county superintendent of the change of the name of said district.

The act of March 20, 1903 (Statutes 1903, page 289), regulating the use of illuminating gas, is codified as section 653 (new) of the Penal Code.

The new section reads as follows:

Sec. 653*e*. Every hotel keeper, lodging-house keeper, and innkeeper, or keeper of any place where rooms are let to lodgers in which or any of which such places illuminating gas is used, who shall turn off,

or cause to be turned off at the meter, the flow of such illuminating gas during the time of the use of any such room or rooms, shall be guilty of a misdemeanor; *provided, however*, that this act shall not apply to any of the persons herein enumerated when such person or persons shall have connected every exit orifice upon the gas fixtures used in such place or places with a practical and safe automatic gas igniter.

The act of March 10, 1891 (Statutes 1891, page 56), relating to costs in civil actions, is codified as section 1020 (new) of the Code of Civil Procedure.

The new section reads as follows:

Sec. 1020. In all civil actions when a summons or subpoena is served by a person other than the sheriff, the person so serving shall be allowed by the court issuing the process such sum as the court may think proper, not exceeding the amount allowed sheriffs by law.

The act of January 23, 1893 (Statutes 1893, page 5), is codified as section 4304 (new) of the Political Code, relating to fees of justices, constables, city recorder, and city marshal against county.

The new section reads as follows:

Sec. 4303. All commissions or fees paid by the state to the officers of any county, or city and county, for services rendered in the assessment, equalization, auditing, and collection of ad valorem taxes, are hereby abolished; *provided*, that this shall not affect the commissions paid to the assessor of the several counties for services rendered in the collection of personal property taxes, as provided by chapter eight of the Political Code, or the mileage allowed to the treasurer of the several counties, or cities and counties, in making settlements with the state, as provided by section three thousand eight hundred and seventy-six of the Political Code.

The act of March 18, 1905 (Statutes 1905, page 243), relating to the organization of school districts, is codified as section 1580 (new) of the Political Code.

The new section reads as follows:

Sec. 1580. All school districts in this state that for a period of five (5) years have been acting as school districts under the laws of this state, are hereby declared to be duly incorporated, and to be bodies politic under the laws of this state, and as such school districts, under their appropriate names, shall have all the rights and privileges and be subjected to all of the duties and obligations of duly incorporated school districts.

The act of March 18, 1905 (Statutes 1905, page 185), relating to the exchange of commodities between the public institutions, is codified as sections 686, 687 and 688 of the Political Code.

The new sections read as follows:

Sec. 686. It shall be the duty of the state board of examiners to arrange, so far as may be practical, for an exchange of surplus products, either manufactured or natural, between the several public institutions owned or managed and controlled by the state, or the political divisions thereof.

Sec. 687. It shall be the duty of the state board of examiners to so distribute and arrange, with the assistance of the boards of managers, directors, or trustees of the several institutions referred to in section 686 of this code, the labor and industry of their inmates that it will prove conducive to their mutual assistance, with a view of advancing the economic management of all the institutions owned or managed and controlled by the state, or the political divisions thereof; and no part of such surplus products shall not be sold or disposed of to any individual, corporation, or association not connected with the state, or any political division thereof, so long as there shall be any demand for any such products by any public institutions owned or managed and controlled by the state, or the political divisions thereof. In estimating the value of such articles for the purpose of such exchange or sale between public institutions, the cost of producing or raising such products, with ten per centum added, shall be the sale price thereof.

Sec. 688. Each institution shall notify the state board of examiners what surplus products they have to dispose of, under the two preceding sections of this code, and the state board of examiners shall notify all the other institutions owned or managed and controlled by the state, or the political divisions thereof, that such articles can be procured and where, and the state board of examiners shall allow no claims for the purchase of any products from any individual, corporation, or association, so long as the same might have been procured from a state institution after it had been duly notified of that fact.

The act of March 23, 1901 (Statutes 1901, page 666), relating to the appointment of policemen on cars or boats of railroad and steamship companies, is codified as section 728 (new) of the Penal Code.

The new section reads as follows:

Sec. 728. The governor of the State of California is hereby authorized and empowered, upon the application of any railroad, street railroad, or steamboat company, to appoint and commission, during his pleasure, one or more persons designated by such company and to serve at the expense of such company, as policeman or policemen, with the powers of peace officers, and who, after being duly sworn, may

act as such policeman or policemen upon the premises, cars, or boats of such company. The company designating such person or persons shall be responsible civilly for any abuse of his or their authority. Every such policeman shall, when on duty, wear in plain view a shield bearing the words "railroad police," or "steamboat police," as the case may be, and the name of the company for which he is commissioned.

The act of March 18, 1905 (Statutes 1905, page 123), relating to the registration of bonds issued by school districts, is codified as sections 1893 and 1894 of the Political Code.

The new sections read as follows:

Sec. 1893. Whenever the owner of any coupon bond, or of any bond payable to bearer, already issued or hereafter issued by any common school, high school, or union high school districts now or hereafter existing in this state, shall present any such bond to the treasurer or other officer of the county in which such district is located, who by law performs the duties of treasurer, with a request for the conversion of such bond into a registered bond, such treasurer, or such other officer, shall cut off and cancel the coupons of any such coupon bond so presented, and shall stamp, print, or write upon such coupon bond, or such other bond payable to bearer, so presented, either upon the back or upon the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner, and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter, and from time to time any such bond may be transferred by such registered owner in person, or by attorney duly authorized on presentation of such bond to such treasurer, or such other officer, and the bond be again registered as before, a similar statement being stamped, printed, or written thereon. Such statement stamped, printed, or written upon such bond may be in substantially the following form:

(Date, giving month, year, and day.)

This bond is registered pursuant to the statute in such cases made and provided in the name of (here insert name of owner) and the interest and principal thereof are hereafter payable to such owner.

.....,
Treasurer (or such other officer).

After any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. Such treasurer or such other officer, shall keep in his office a book or books which shall at all times show what bonds are registered and in whose names respectively.

Sec. 1894. Whenever under any statute or law of this state any bonds are issued, whether the proceedings for the issuance of such bonds have been had in whole or in part prior to the enactment of this statute, or whether the same have been had in whole or in part after the enactment of this statute, such bonds may be issued either in the form of coupon bonds, or in the form of registered bonds, or some in the form of coupon bonds and some in the form of registered bonds, as has been or hereafter may be provided in the proceedings for the issuance of such bonds and notwithstanding any language or provision to the contrary contained in any such statute authorizing the issuance of the bonds, or in any other law of the state. The provisions of section one of this act shall apply to coupon bonds, so issued, as well as to other coupon bonds, or other bonds payable to bearer.

The act of February 20, 1889 (Statutes 1889, page 32), requiring a general vaccination in the State of California, is codified as sections 2995, 2996, 2997, 2998, and 2999 of the Political Code.

The new sections read as follows:

Sec. 2995. The trustees of the several common school districts in this state, and boards of common school government in the several cities and towns, are directed to exclude from the benefits of the common schools therein any child or any person who has not been vaccinated until such time when said child or person shall have been successfully vaccinated; *provided*, that any practicing and licensed physician may certify that the child or person has used due diligence and can not be vaccinated so as to produce a successful vaccination, whereupon such child or person shall be excepted from the operation of this act.

Sec. 2996. The school trustees or local boards of education must, annually, or at such special times to be stated by the state board of health, give at least ten days' notice, by posting a notice in two or more public and conspicuous places within their jurisdiction, that provision has been made for the vaccination of any child of school age who may desire to attend the common schools, and whose parents or guardians are pecuniarily or otherwise unable to procure vaccination for such child, stating the name and address of the physician or physicians with whom such provision has been made.

Sec. 2997. The said trustees or board must every year ascertain the number of children or persons in their respective school districts or subdivisions of the city school government being of an age suitable to attend common schools who have not been already successfully vaccinated, and make a list of the names of all such children or persons. It also shall be duty of said trustees or board to provide for the vaccination of all such children or persons in their respective school districts a good and reliable vaccine virus wherewith to vaccinate such children

or persons who have not been vaccinated; and when so vaccinated, to give a certificate of vaccination, which certificate shall be evidence thereof for the purpose of complying with section 2995.

Sec. 2998. The necessary expenses incurred by the provisions of this act shall be paid out of the common school moneys apportioned to the district, city, or town; and if there be not sufficient money, the trustees must notify the board of supervisors of the amount of money necessary, and the board must, at the time of levying the county tax, levy a tax upon the taxable property in the district sufficient to raise the amount needed. The rate of taxation is ascertained by deducting fifteen per cent for delinquencies from the assessment, and the rate must be based upon the remainder. The tax so levied must be computed and entered upon the assessment roll by the county auditor and collected at the same time and in the same manner as state and county taxes, and when collected shall be paid into the county treasury for the use of the district.

Sec. 2999. The trustees of the several school districts of this state must include in their annual report, and report to the secretary of the state board of health, the number in their several districts between the ages of five and seventeen years who are vaccinated, and the number unvaccinated.

The act of March 23, 1872 (Statutes 1872, page 533), relating to actions of libel and slander, is codified as sections 1040, 1041, and 1042 of the Code of Civil Procedure.

The new sections read as follows:

Sec. 1040. In an action for libel or slander the clerk shall, before issuing the summons therein, require a written undertaking on the part of the plaintiff in the sum of five hundred (\$500) dollars, with at least two competent and sufficient sureties, specifying their occupations and residences, to the effect that if the action be dismissed or the defendant recover judgment, that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, or on appeal, not exceeding the sum specified in the undertaking. An action brought without filing the undertaking required shall be dismissed. Each of the sureties on the undertaking mentioned in this section shall annex to the same an affidavit that he is a resident and householder or free holder within the county, and is worth double the amount specified in the undertaking over and above all his just debts and liabilities, exclusive of property exempt from execution.

Sec. 1041. Within ten days after the service of the summons the defendants, or either of them, may give to the plaintiff or his attorney notice that they or he except to the sureties and require their justification before a judge of the court at a specified time and place, the time to

be not less than five nor more than ten days thereafter, except by consent of parties. The qualifications of the sureties shall be as required in their affidavits. For the purpose of justification, each of the sureties shall attend before the judge at the time and place mentioned in the notice, and may be examined on oath touching his sufficiency in such manner as the judge in his discretion shall think proper. The examination shall be reduced to writing if either party desires it. If the judge finds the undertaking sufficient, he shall annex the examination to the undertaking, and indorse his approval thereon. If the sureties fail to appear, or the judge finds the sureties or either of them insufficient, he shall order a new undertaking to be given. The judge may also at any time order a new or additional undertaking upon proof that the sureties have become insufficient. In case a new or additional undertaking is ordered, all proceedings in the case shall be stayed until such undertaking is executed and filed, with the approval of the judge, and if the undertaking be not filed in five days after the order therefor, the judge or court shall order the action to be dismissed.

Sec. 1042. In case plaintiff in an action for libel and slander recovers judgment, he shall be allowed as costs one hundred (\$100) dollars, to cover counsel fees, in addition to the other costs. In case the action is dismissed, or the defendant recover judgment, he shall be allowed one hundred (\$100) dollars to cover counsel fees, in addition to the other costs, and judgment therefor shall be entered accordingly.

The act of March 19, 1903 (Statutes 1903, page 210), is codified as section 2329 of the Political Code.

The new section reads as follows:

Sec. 2329. No inmate of any state institution shall be employed in the manufacture or production of any article intended for the private and personal use of any state officer, or officer or employee of any state institution; *provided*, that this act shall not prevent repairing of any kind nor the employment of such inmates in household or domestic work connected with such institution.

The act of March 20, 1905 (Statutes 1905, page 477), regulating the charges and costs of bonds of receivers and others, is codified as section 1060 (new) of the Code of Civil Procedure.

The new section reads as follows:

Sec. 1060. Any receiver, assignee, trustee, guardian, administrator, or executor, required by law or by the order of court to give a bond as such, shall be allowed as part of the lawful expense of executing his trust, the sum paid for such bond not exceeding, however, one half ($\frac{1}{2}$) of one (1) per centum of the amount of such bond, for each year that the same shall remain in force.

The act of March 25, 1903 (Statutes 1903, page 476), relating to the payment of premiums on bonds of officials by the state or counties, or cities, or cities and counties, of the State of California, is codified as section 988 (new) of the Political Code.

The new section reads as follows:

Sec. 988. The premium or charge for bonds given by surety companies for state officials, count officials, city officials, or city and county officials, shall be paid by the state, county, city, or city and county respectively; *provided, however*, that no premium or charge shall exceed one half of one per cent per annum on the amount of such bond; *and provided further*, that this section shall not apply to notaries public.

The act of March 18, 1905 (Statutes 1905, page 102), perpetuating the markings of the government surveys, is codified as section 4221 (new) of the Political Code.

The new section reads as follows:

Sec. 4221. When in the performance of his official duties any county surveyor shall find a government corner which has been marked by any government surveyor by placing charcoal in the ground, or by a wooden stake, earth mound, or other perishable monument, it shall be his duty to re-mark said corner by placing therein a monument of heavily galvanized iron pipe or galvanized iron stake, not less than two inches in diameter and not less than two feet long, or other monument not less in size and equally imperishable, to be furnished by the county. All such monuments located in public highways shall be placed with the top not less than twelve inches below the surface of the ground, but when not located in public highways they shall be placed with the top six inches above the surface of the ground. If the top of the monument is placed above the ground, it shall be not less than four feet long, if of metal. The surveyor shall note witness objects that are within a reasonable distance of any corner, and state distance and course from said corner, and record the same in a properly indexed record book kept in the county surveyor's office, which shall be a public record.

The act of March 18, 1905 (Statutes 1905, page 115), relating to the issuance and registration of burial and disinterment permits, is codified as sections 3074 $\frac{1}{2}$, 3075 $\frac{1}{2}$, 3080*a*, 3080*b*, 3080*c*, 3080*d*, 3080*e*, 3080*f*, 3080*g*, 3080*h*, 3080*i*, 3080*j*, and 3084 of the Political Code.

The new sections read as follows:

Sec. 3074 $\frac{1}{2}$. The State of California shall be divided into registration districts as follows: Each city and county, city, and incorporated town, and each county exclusive of the portion included within cities and incorporated towns, shall constitute a primary registration district.

Sec. 3075½. That the recorder of each county and city and county, and the clerk of each city or incorporated town, shall be the local registrar in and for such primary registration district, and shall perform all such duties of local registrar as hereinafter provided; *provided, however*, that in cities having a freeholders' charter the health officer shall act as local registrar and perform all the duties thereof. Each local registrar shall immediately appoint, in writing, a deputy who shall be authorized to act in his stead in case of absence, death, illness, or disability, and when it may appear necessary for the convenience of people in any registration district, the local registrar is hereby authorized, with the approval of the state registrar of vital statistics, to appoint one or more proper and competent persons to act as subregistrars, who shall be authorized to receive certificates of death and to issue burial permits or removal permits in and for such portions of the registration district as may be designated. Each subregistrar shall note, in legible writing over his signature, the date each certificate of death was filed, and shall forthwith forward the certificate to the local registrar of the registration district, and in all cases before the fifth day of the following month; *provided*, that all subregistrars shall be subject to the supervision and control of the state registrar of vital statistics.

Sec. 3080a. That the body or remains of no person whose death occurs in the state shall be interred, deposited in a vault, grave or tomb, cremated, disinterred, or otherwise disposed of, or removed from or into any registration district until a permit for burial, disinterment, or removal shall have been properly issued by the registrar of the registration district in which the death occurs, except in the case where there are two or more registration districts within the same county, or where there are two contiguous registration districts not in the same county, a body may be removed from the registration district where the death occurred to another registration district within the same county, or contiguous registration districts in different counties, for the purpose of preparing said body for burial or shipment; *provided*, that before such burial or shipment the undertaker, sexton, or other person in charge, shall have first secured a permit for the interment or removal of said body from the registrar of the registration district where the death occurred. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate and return of the death has been filed with him, as hereinafter required; *provided*, that in case of any death outside of the state, where the body is accompanied by a removal or transit permit issued in accordance with the law and the health regulations in force where the death occurred, such removal or transit permit shall be accepted as of the same authority as a permit from the local registrar when such removal or transit permit

shall have indorsed thereon the written approval of the state registrar of vital statistics, or when said state registrar otherwise officially notifies the local registrar of his approval.

Sec. 3080*b*. Stillborn children, or those dead at birth, shall be registered as deaths under this act, and a certificate of death and burial or removal permit in usual form shall be required. The medical certificate of cause of death shall be signed by the attending physician or midwife, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation in months, if known.

Sec. 3080*c*. That the certificate of death shall be of the standard form recommended by the United States census office and the American public health association, and shall contain the following items:

(1) Place of death, including state, county, township or town, city, or village. If in a city, the ward, street, and house number. If in a hospital or other institution, the name of the same to be given instead of the street and house number.

(2) Full name of decedent. If an unnamed child, the surname, preceded by "unnamed."

(3) Sex.

(4) Color or race—as white, black (negro or negro descent), Indian, Chinese, Japanese, or other.

(5) Conjugal condition—as single, married, widowed, or divorced.

(6) Date of birth, including the year, month, and day.

(7) Age in years, months, and days.

(8) Place of birth; state or foreign country.

(9) Name of father.

(10) Birthplace of father; state or foreign country.

(11) Maiden name of mother.

(12) Birthplace of mother; state or foreign country.

(13) Occupation; the occupation to be reported of any person who had any remunerative employment—women as well as men.

(14) Signature and address of informant.

(15) Date of death, including the year, month, and day.

(16) Statement of medical attendance on decedent, fact and time of death, including the time last seen alive.

(17) Cause of death, including the primary and immediate causes, and contributory causes or complications, if any, and the duration of each.

(18) Signature and address of physician or official making the medical certificate.

(19) Special information concerning deaths in hospitals and institutions, and of persons dying away from home, including the former or

usual residence, length of time at place of death, and place where the disease was contracted.

(20) Place of burial or removal.

(21) Date of burial or removal.

(22) Signature and address of undertaker.

(23) Official signature of registrar, with date when certificate was filed and registered number.

The certificate shall be written legibly in permanent black ink, type-written or printed, and no certificate shall be held to be complete and correct that does not supply all of the items of information specified above or satisfactorily account for the omission of any of said items. The personal and statistical particulars (items 1 to 13), or such other items as shall be required by the state registrar, shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts. The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such. The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred. He shall further state the cause of death, so as to show the cause of disease or sequence of causes resulting in death, giving the primary and immediate causes, and contributing causes, if any, and the duration of each. Indefinite and unsatisfactory terms indicating only symptoms of disease or conditions resulting from disease will not be held sufficient for issuing a burial or removal permit, and any certificate containing only such terms, as defined by the state registrar, shall be returned to the physician for correction or definition. Causes of death, which may be the result of either disease or violence, shall be carefully defined; and, if from violence, its nature shall be stated, and whether accidental, suicidal or homicidal. For cause of death in hospitals, institutions, or away from home, the physician shall furnish the information required under this head, and shall state where, in his opinion, the disease was contracted. The cause of death and all other facts required shall in all cases be stated in accordance with the instructions and directions of the state registrar.

Sec. 3080*d*. In case of any death occurring without medical attendance, it shall be the duty of the undertaker to notify the registrar of such death, and when so notified the registrar shall refer the case to the coroner for his investigation and certification; and the coroner shall within three days after the inquest furnish the local registrar where such death occurs a certificate in form and substance as required by the state registrar, and containing as many of the facts required by this act as can be ascertained. Said local registrar shall forthwith

transmit such certificate to the state registrar, retaining a copy thereof on file in his office.

Sec. 3080*e*. The undertaker, or person acting as undertaker, shall be responsible for obtaining and filing the certificate of death with the registrar and securing a burial or removal permit prior to any disposition of the body. He shall obtain the personal and statistical particulars required from the person best qualified to supply them over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, and if there be none, then to the health officer or coroner, as directed by the registrar, for the certificate of the cause of death and other particulars necessary to complete the record as specified in section 3080*a*. And he shall then state the facts required relative to the date and place of burial over his signature and with his address, and present the completed certificate to the registrar within the time limit, if any, designated by the local board of health for the issuance of a burial or removal permit. The undertaker shall deliver the burial permit to the sexton or person in charge of the premises before interring the body, or attach it to the box containing the corpse, when shipped by any transportation company, to accompany same to destination, when it shall be accepted by the sexton as authority for the interment of the body.

Sec. 3080*f*. It shall be the duty of each local registrar to supply to any persons, requiring them, blank forms of certificates prepared and furnished by the board of supervisors of the county. He shall carefully examine each certificate when presented for record to see that it has been made out in accordance with the provisions of this act and the instructions of the state registrar, and if any certificate is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return and to withhold issuing the burial or removal permit until they are corrected. He shall then number them in consecutive order, beginning with number one for the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. If the certificate is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; *provided*, that in case the death occurred from some disease that it is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the registrar except under such conditions as may be prescribed by the state and local boards of health. He shall also make a complete and accurate copy of each certificate registered by him, upon a form identical with the original certificate, to be filed and permanently preserved in his office as the local record of such death, in such manner as directed by the state registrar. He shall, on or before the fifth day of each month,

transmit to the state registrar all original certificates registered by him during the preceding month. If no deaths occurred in any month, he shall, on or before the fifth day in any month, report that fact to the state registrar in such manner as the state registrar shall direct.

Sec. 3080g. If the interment or other disposition of the body is to be made in the registration district in which the death occurred, or in a contiguous registration district in the same or an adjoining county, the wording of the burial permit may be limited to a statement by the registrar and over his signature, that a satisfactory certificate of death having been filed with him as required by law, permission is granted to inter, remove, or otherwise dispose of the body of the deceased, stating the name, age, sex, and cause of death and other necessary details upon the form prescribed by the state registrar. In case the interment or other disposition of the body is to be made in some registration district not contiguous to that in which the death occurred, a complete copy of the certificate of death shall be attached to and made a part of the removal permit issued by the registrar of the district in which the death occurred.

Sec. 3080h. No sexton or person in charge of any premises in which interments are made shall inter or permit the interment of any body unless it is accompanied by a burial, removal, or transit permit, as herein provided. Each sexton or person in charge of any burial ground shall indorse upon the permit the date of interment, with his signature, and shall return all permits, so indorsed, to the local registrar of his district within one day from the date of interment. He shall also keep a record of all interments made in the premises under his charge, stating the name of the deceased person, place of death, date of burial, and name and address of the undertaker, if any, which record shall at all times be open to public inspection.

Sec. 3080i. The state registrar shall prepare a sample form and blank for all registrars for use in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this act, and shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. No other forms or blanks shall be used than those prescribed by the state registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory, he shall require such further information to be furnished as may be necessary to make the record satisfactory. All physicians, informants, or undertakers connected with any case, and all other persons having knowledge of the facts, are hereby required to furnish such information as they may possess regarding any death, upon demand of the

state registrar in person, by mail or through the local registrar, who shall further arrange, bind, and permanently preserve the certificates in a systematic manner; and shall prepare and maintain a complete index of all deaths registered, showing the name of the deceased, place and date of death, number of certificate, and the volume in which it is contained. He shall inform all registrars what diseases are to be considered as infectious, contagious, or communicable, and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent the spreading of dangerous diseases; and all rules and regulations made by him for carrying out and enforcing the purposes of this act shall, when promulgated, have the same force and effect as if enacted by law.

Sec. 3080j. Whenever it may be alleged that the facts are not correctly stated in any certificate of death theretofore registered, the local registrar shall require an affidavit under oath to be made by the person asserting the fact, to be supported by the affidavit of one other credible person having knowledge of the facts, setting forth the changes necessary to make the record correct. Having received such affidavits, the local registrar shall file them, and shall then draw a line through the incorrect statement or statements in the certificate, without erasing them, and make the necessary corrections, noting on the margin of the certificate his authority for so doing, and transmit the affidavits, attached to the original certificate, when making his regular monthly returns to the state registrar. If the correction relates to a certificate previously returned to the state registrar, the local registrar shall transmit the affidavit forthwith to the state registrar. If the correction is first made upon the original certificate on file in the state bureau of vital statistics, the state registrar shall transmit a certified copy of the original certificate, corrected as above, to the local registrar, who shall thereupon substitute such certified copy for the copy of the certificate in his records. All such corrections and marginal notes referring to them shall be legibly written in ink, typewritten, or printed.

Sec. 3084. Each local registrar shall be entitled to be paid the sum of not exceeding twenty-five cents for each death certificate properly and completely made out and registered with him, and by him returned to the state registrar on or before the fifth day of the following month, which sum shall cover and include the making out of the burial permit and the copy of the certificate to be filed and preserved in his office; and in case no deaths were registered during any month, the local registrar shall be entitled to a sum not exceeding twenty-five cents for each report to that effect, promptly made in accordance with the directions of the state registrar; *provided, however*, that all such compensation for such services shall be fixed by the board of supervisors, city

council, trustees, or other governing body of such county, city and county, city or town, constituting such registration district. All amounts payable to registrars under the provisions of this act shall be paid out of the funds provided by the supervisors, council, trustees, or other governing body of such county, city and county, city or town, constituting a primary registration district, upon warrants drawn by the local auditor or other proper local officer of such county, city and county, city or town, which warrants shall specify the number of certificates properly registered and also the number of reports promptly returned where no deaths are registered, with the amount claimed to be due for each; *provided, however*, that a warrant shall not be issued to any local registrar, or if issued shall not be paid, where notice is previously given by the state registrar to the auditor, treasurer, or other proper officer of such county, city and county, city or town constituting such registration district, that the local registrar claiming any fee has failed to comply with the rules and regulations of the state bureau of vital statistics and the instructions of the state registrar. Each sub-registrar shall be entitled to be paid the sum of not exceeding fifteen cents for each death certificate properly and completely registered with him, and by him returned to the local registrar before the fifth day of the following month. All amounts payable to subregistrars shall be paid to them by the local registrars appointing them from the amounts received by the local registrars as hereinbefore provided.

The act of February 26, 1903 (Statutes 1903, page 41), relating to license taxes on the business of sheep raising, is codified as section 3367 (new) of the Political Code.

The new section reads as follows:

Sec. 3367. No license or licenses greater than five cents per head shall be imposed by the board of supervisors of any county on the business of raising, herding or pasturing sheep, and any and all licenses imposed by the board of supervisors of any county on the business of raising, herding or pasturing sheep, in excess of five cents per head, shall be and are hereby declared invalid; *provided*, the provision of this act shall not apply to any license tax the validity of which is involved in any suit now pending, or to any such license tax due when this act takes effect.

The act of March 15, 1883 (Statutes 1883, page 376), relating to the prevention of contagious and infectious diseases, is codified as sections 2985, 2986, and 2987 of the Political Code.

The new sections read as follows:

Sec. 2985. Whenever there shall exist, in the opinion of the state board of health, imminent danger of the introduction of contagious or

infectious diseases into the State of California, by means of railroad communication with other states, it shall be the duty of the said state board of health to make or cause to be made, by an accredited agent or inspector, an inspection of all railroad cars coming into this state at such point, or between such points within the state limits as may be selected for the purpose.

Sec. 2986. Such inspection shall be made, where practicable, during the ordinary detention of a train at a station, or while in transit between stations, and in all cases shall be so conducted as to occasion the least possible detention or interruption of travel or inconvenience to the railroad companies, so far as consistent with the purposes hereof.

Sec. 2987. Should the discovery be made of the existence among the passengers of any case or cases of dangerous contagious or infectious disease, the said Board of Health, or their agent or inspector, under rules and conditions prescribed by them as being applicable to the nature of the disease, shall have power to cause the sidetracking or detention of any car or cars so infected, to isolate the sick or remove them to a suitable place of treatment, to establish a suitable refuge station, to cause the passengers and materials in such infected car to be subjected to disinfection and cleansing before proceeding farther into the State, in the case of smallpox, to offer free vaccination to all persons exposed in any car or at any station.

It is recommended that the collateral inheritance tax law be codified under the head of taxes in the Political Code as sections 3370, 3371, 3372, 3373, 3374, 3375, 3376, 3377, 3378, 3379, 3380, 3381, 3382, 3384, 3385, 3386, 3387, and 3388.

As no changes are suggested the new sections are omitted from this report.

The act of 1893, page 46, fixing the salary of the janitor of the state capitol, defining his duties, approved February 27, 1893, is codified as section 422 (new) of the Political Code.

The new section reads as follows:

Sec. 422. It shall be the duty of the janitor to take general charge of the state capitol building, and to secure and preserve the furniture, carpets, curtains, and all other property therein. He shall superintend the lighting of the building, note the gas meter and the electric meter, and the correctness of the bills for gas and electric lighting for each month, before the same is presented for payment. He shall check the delivery of supplies of wood and coal, and become satisfied that the quantity delivered corresponds with the amount ordered by the superintendent, and certify to the correctness thereof to the superintendent. He

shall check the delivery of supplies of stationery and blank books received from contractors, by schedules furnished him by the state board of examiners. He shall have the charge and custody of all stationery and blank books purchased by the state for the use of state officers and members of the legislature, and shall keep a strict and accurate account of all supplies drawn by each, and also an account of all supplies on hand. He shall exercise general supervision of the porters and watchman, have full power to make arrests for disorderly conduct about the building or grounds, and do and perform such other duties as may be required of him by the superintendent.

Section 1. An act entitled "An act fixing the salary of the janitor of the state capitol building, defining his duties, and making an appropriation therefor," approved February 27, 1893, is hereby repealed.

The act of April 6, 1891 (Statutes 1891, page 490), authorizing certain corporations to act as executors and trustees, is codified as sections 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, and 565 of the Civil Code.

Sections 557 to 566 of the same code as they now stand, are recommended for repeal, as they relate to homestead corporations, and are obsolete.

There being no changes recommended in the law the new sections are omitted from this report.

It is suggested that section 1670 of the Political Code, relating to the management and conduct of schools authorizing the withholding of moneys from school districts for certain reasons be amended by omitting therefrom subdivision 17, which violates section 12 of article XI of the constitution.

See *McCabe vs. Carpenter*, 102 Cal. 469.

The act of March 8, 1901, (Statutes 1901, page 110), is codified as sections 1987 and 1988 (new) of the Political Code.

The new sections read as follows:

Sec. 1987. Any military organization composed of veterans of the civil war, and having the minimum number required to constitute a company, if, upon the required examination they be found capable of efficient service to the state in the performance of active, garrison, or other military duty, may be organized and mustered into the military service of the state notwithstanding the members thereof may be over the age of forty-five years; and such companies or organizations, when so constituted shall be mustered into, and become a part of, the national guard of the state, and shall be subject to all the laws regulating and governing the national guard, except that they shall be deemed and considered independent, unattached companies, acting under the direct orders of the commander-in-chief.

Sec. 1988. Such companies shall receive such allowances as may be approved and allowed by the state board of military auditors out of any moneys appropriated for the use of such companies; *provided, however*, that such allowances shall in no case exceed the sum of five hundred dollars for any one of such companies for any one fiscal year.

Section 1. An act entitled "An act to provide for independent and unattached companies of the national guard of the State of California, and to provide for the manner of making allowances for the use and support of such companies," approved March 8, 1901, is hereby repealed.

Respectfully submitted.

J. W. WILEY.

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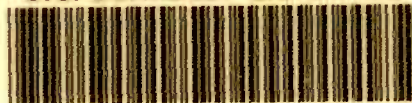
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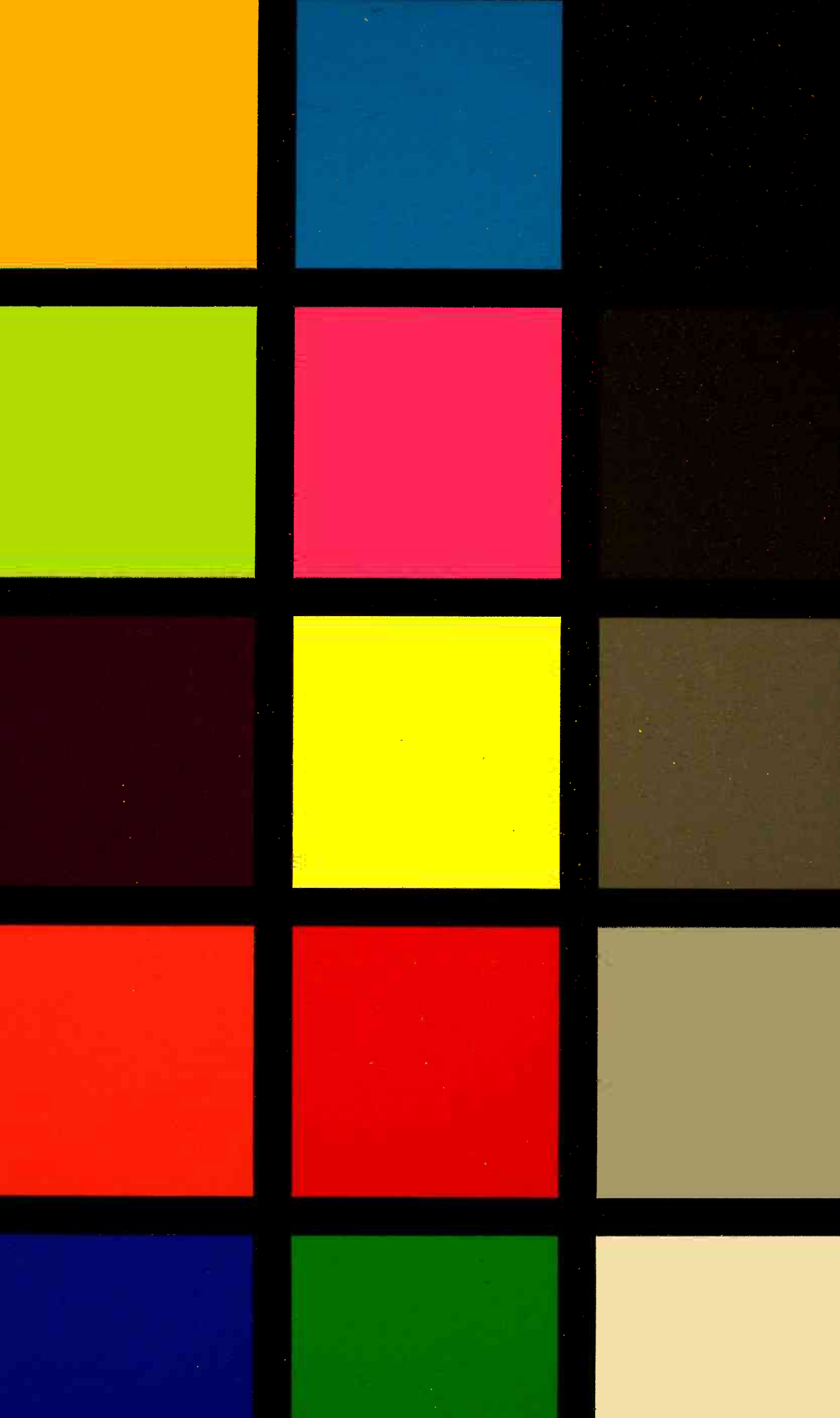


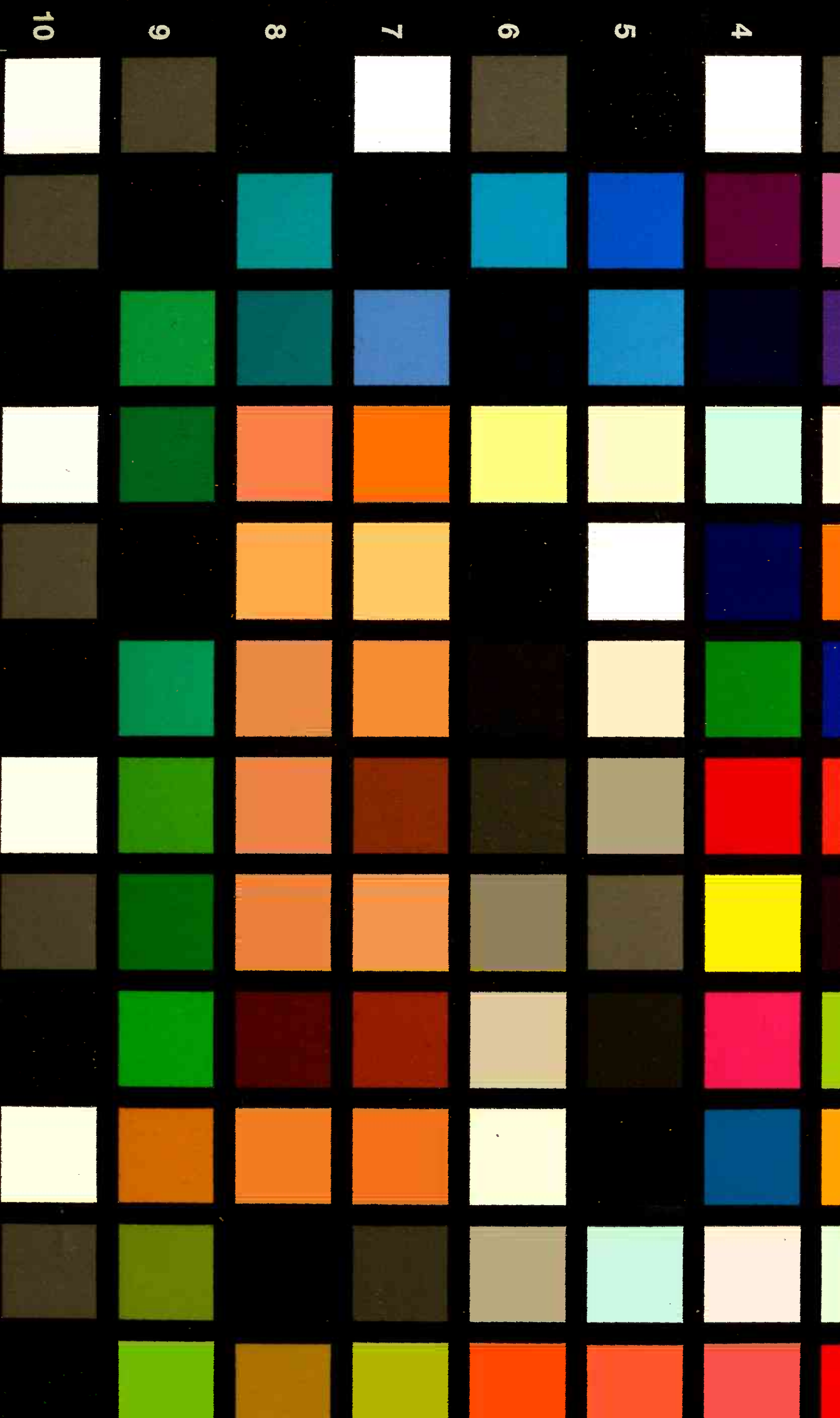
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